W- 2000

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

13 - 17 JANUARY 1986 (W-2000)

NEWARK PUBLIC LIBRARY
FEB
U. S. DEPT. PUBLIC
DEPOSITORY 32

CASES SUMMARIZED

Aaron's Office Furniture Co., Inc.	Itasca, Ill.	3
American Mirror Co., Inc.	Galax, Va.	2
American Stores Packing Co., A Div. of Acme Markets, Inc.	Lincoln, Neb.	16
Amoco Oil Co.	Whiting, Ind.	12
Arlington Hotel Co., Inc.	Hot Springs, Ark.	5
Big Pine Trucking Co.	Bishop, Calif.	1
Boyd-Mulford Construction Co.	Ardmore, Pa.	2
Bristol Textile Co.	Bristol, Pa.	1
Community Hospital at Glen Cove	Glen Cove, N.Y.	11
Dillingham Tug & Barge Corp. and Inlandboatmen's Union of the Pacific, Marine Div.-- Longshoremen's and Warehousemen's Union, Hawaii Region	Honolulu, Hawaii	17

LR 1.15/2:

Drummond Coal Co., Inc.	Jasper, Ala.	14
Duo-Fast Corp.	Long Island City, N.Y.	4
Eastone of Ohio, Inc.	McDermott, Ohio	6
Evans Plumbing Company and its alter ego Evans Services, Inc.	Birmingham, Ala.	6
Foote and Davies, Inc.	Doraville, Ga.	13
Greater Lebanon Hotel Enterprises, Inc., t/a Quality Inn-Lebanon Valley	Lebanon, Pa.	13
Hunter and Walker, Inc.	Detroit, Mich.	7
International Association of Machinists; Machinists District 91 and its Lodge 707	North Haven, Conn.	9
Lockheed Shipbuilding and Construction Co.	Seattle, Wash.	8
Medallion Kitchens, Inc.	Fergus Falls and Waconia, Minn.	3
Monroe Transport, Inc.	Big Stone Gap, Va.	10
Reeves Brothers, Inc.	Cornelius, N.C.	15
Rockwell International Corp.	Norcross, Ga.	9
Scroll Casual A Wholly Owned Subsidiary of Sunline Industries, Inc.	Miami, Fla.	12
Senator Theatre, Capitol Hill Cinemas	Washington, D.C.	11
Tajon, Inc.	Niagara Falls, N.Y.	4

OTHER CONTENTS

List of Decisions of Administrative Law Judges 19

List of Directions of Elections by Regional Directors 19

Request Form for decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Bristol Textile Co. (4-RC-14343; 277 NLRB No. 182) Bristol, Pa. 13 January. The Board disagreed with the hearing officer's recommendation to overrule Employer objections to an election held 14 November 1980 in which employees voted 15-12 in favor of representation by Retail, Whilesale and Department Store Union Local 1034.

The Employer alleged that Union agents had threatened to slash the tires of, and take other specified action against, those employees who voted against the Union. The threat was overheard by the Employer from a conversation between two "well-known prounion employees," brothers Anthony and Albert Pirollo.

Contrary to the hearing officer, the Board found that Anthony Pirollo was an agent of the Union. The Board noted that Anthony was identified by Donald Sullivan, the Union's vice president, as "my contact," and also made weekly reports and relayed employee questions to Sullivan who dealt exclusively with Anthony. Thus, although the Union did not designate Anthony as its representative, or pay him, he nevertheless served as the "union's presence," and as such, the threat was attributable to the Union, the Board ruled.

The Board concluded the threat would reasonably have tended to interfere with the employees' free and uncoerced choice in the election, noting that the threat to slash tires was coercive on its face, and was disseminated to at least seven employees. The Board directed a second election.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

Big Pine Trucking Company (31-CA-13843; 277 NLRB No. 183) Bishop, Calif. 13 January. Absent any explanation for the Employer's failure to file a timely answer to a backpay specification and notice of hearing, arising out of the underlying case at 270 NLRB No. 210 (1984) (not reported in Board volumes), filed on behalf of Teamsters Local 986, the Board granted the General Counsel's motion for summary judgment, concluding that the backpay due employees and the payments to the Teamsters Miscellaneous Security Fund and the Western Conference of Teamsters Pension Trust Fund were as stated in the computations of the specification.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

Boyd-Mulford Construction Co. (4-CA-14732; 277 NLRB No. 180) Ardmore, Pa. 13 January. The Board affirmed an administrative law judge's decision that the Employer violated the Act by failing to furnish the Metropolitan District Council of Carpenters of Philadelphia and Vicinity with information regarding the Employer's relationship with Felber, Inc. and S.K. Kelso Sons, Inc.

The judge determined that because the Union had a factual basis in its belief that Felber, Kelso and Boyd-Mulford constituted a single employer, and that Boyd-Mulford may have been evading its collective-bargaining agreement with the Union by a practice known as "double-breasting," the Union had a legitimate purpose in requesting the information for the purpose of policing its agreement with Boyd-Mulford. By informing the Employer of the nature of the violation suspected, the Union had satisfied the requirements to support its information request, concluded the judge.

(Members Dennis, Johansen and Babson participated.)

Charges filed by the Metropolitan District Council of Carpenters of Philadelphia and Vicinity; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Philadelphia, 19 February 1985. Adm. Law Judge Karl H. Buschmann's decision issued 30 September.

* * *

American Mirror Company, Inc. (5-CA-14969, 15355; 277 NLRB No. 179) Galax, Va. 13 January. Contrary to an administrative law judge, the Board dismissed allegations that the Employer violated the Act by polling its employees, and by withdrawing recognition from the Furniture Workers.

The Board found that the Employer had a reasonably grounded doubt about the Union's continued majority status after receiving signed rejections of the Union from 42 of 108 unit employees, and 4 separate oral reports from employees that the Union no longer enjoyed majority support. Accordingly, the Board concluded that, after receiving this information, the Employer lawfully polled employees as to their union sentiments and then lawfully withdrew recognition from the Union based on the results of the balloting.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Furniture Workers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Galax, 19 September 1983. Adm. Law Judge James L. Rose's decision issued 11 January 1985.

* * *

Medallion Kitchens, Inc. (18-CA-8923; 277 NLRB No. 175) Fergus Falls and Waconia, Minn. 13 January. The Board agreed with an administrative law judge that the Employer violated the Act by hiring new employees to perform bargaining unit work and failing and refusing to recall the former striking employees who had made unconditional offers to return to work.

Noting that there was no need to show animus on the part of the Employer, the judge found that the Employer did not exhaust the recall list and that available positions should have been offered to former strikers.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Auto Workers Local 1267; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Minneapolis, 14-15 February 1985. Adm. Law Judge John H. West's decision issued 24 July.

* * *

Aaron's Office Furniture Company, Inc. (13-CA-25302; 277 NLRB No. 185) Itasca, Ill. 14 January. The Board found that the Employer violated the Act by refusing to bargain with Teamsters Local 673, and ordered the Employer to bargain on request of the Union.

The Union, certified following a Board election on 15 August 1985, charged that the Employer had refused to bargain since 26 August 1985.

In granting summary judgment against the Employer, the Board noted that all the issues raised by the Employer were or could have been litigated in the prior representation proceeding. The Board indicated that the Employer did not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor did it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. Thus, no properly litigable issue was raised, and summary judgment was granted.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 673; complaint alleged violation of the Act's Section 8(a)(1) and (5). Board notice to show cause issued 6 November 1985.

* * *

Tajon, Inc. (3-CA-10479(E); 277 NLRB No. 184) Niagara Falls, N.Y. 13 January. The Board affirmed the supplemental decision of an administrative law judge that denied an applicant's request for attorney fees under the Equal Access to Justice Act (EAJA). The Employer had prevailed in a case after being charged with violating the Act by refusing to complete and execute a binding collective bargaining agreement with the Fraternal Association of Special Haulers, and for withdrawing recognition from the Union before a reasonable time for bargaining had elapsed.

The Board held that in view of the conflict in the General Counsel's pretrial evidence, and the applicant's own pretrial statement essentially admitting that a contract had been agreed upon, the General Counsel was substantially justified in proceeding to trial on the refusal-to-execute allegation. In addition, it found, in accord with the judge's decision, that the General Counsel was substantially justified in litigating the issue of whether a reasonable time for bargaining had elapsed. Consequently, the Employer was denied the application for attorney fees.

(Chairman Dotson and Members Dennis and Johansen participated.)

Administrative Law Judge Russell M. King, Jr.'s decision issued 27 June 1984.

* * *

Duo-Fast Corporation (29-RD-495; 278 NLRB No. 10) Long Island City, N.Y. 16 January. The Board overruled Union objections to a decertification election held 15 June 1984. It certified that Teamsters Local 210 did not receive a majority of the valid ballots cast in that election.

Chairman Dotson and Member Johansen found that the Employer did not interfere with the free conduct of the election when, shortly before the election, it circulated a leaflet comparing the insurance benefits of its union-represented employees to the benefits it provided nonunion employees, and when its division manager answered employee inquiries about a possible change in insurance coverage. The Employer did

nothing more than make an honest comparison of benefits or give a straightforward explanation concerning insurance coverage in the event of a change in union representation, the Board panel majority said. It thus overruled an objection alleging that the Employer impermissibly promised benefits if employees voted out the union.

Member Dennis dissented in a footnote. She would find that the division manager made an objectionable promise of benefits while distributing the leaflet comparing the fringe benefits. She noted that the manager stated that if employees voted the Union out, they would receive "basically this type of coverage."

An objection that the Employer interfered with the election by providing a $50 bonus to each unit employee during the preelection period was also overruled. The Board found that it was the Employer's practice to give bonuses at least once every quarter.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

Arlington Hotel Company, Inc. (26-CA-10729; 278 NLRB No. 7) Hot Springs, Ark. 16 January. The Board affirmed an administrative law judge's dismissal of a complaint which alleged that the Employer violated the Act by discharging Violet Doll because of her activity for the Ladies Garment Workers.

In addition to the factors upon which the judge relied in reaching his conclusion, the Board specifically noted that Bernard Sisman, who was solely responsible for the decision to terminate Doll, was unaware that a principal union activist was involved when he began an inquiry to determine the identity of the waitress who falsified a meal ticket during a Sunday brunch, which ultimately led to Doll's termination.

Similarly, the Board noted that while there was evidence that employees guilty of insubordination and other acts comparable to Doll's falsification of the meal ticket were not discharged, the decisions concerning the discipline of these employees were made before Sisman's

arrival and therefore could not serve as evidence that Sisman engaged in disparate treatment when he discharged Doll.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Ladies Garment Workers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Hot Springs, 14-17 August and 10-11 October 1984. Adm. Law Judge Richard J. Linton's decision issued 11 March 1985.

* * *

Evans Plumbing Company and its alter ego Evans Services, Inc. (10-CA-15507; 278 NLRB No. 9) Birmingham, Ala. 17 January. The Board upheld an administrative law judge's backpay decision awarding as net backpay to Jack T. Lee the sum of $37,909 and to Fred J. Meeks the sum of $3,909.04.

The case stemmed from a 1980 Board decision and order, enforced by the U.S. Court of Appeals for the Fifth Circuit, that Evans Plumbing had unlawfully discharged and refused to reinstate Meeks and Lee.

In the supplemental decision, the judge noted that the Employers had failed to specifically deny and state the basis for their disagreement, if any, with the gross backpay calculations. This, he said, did not conform to the requirements of Section 102.54 of the Board's Rules and Regulations. Further, the judge found that the amounts shown as interim earnings and related expenses, and the net earnings set out in the calculations were true and accurate.

(Chairman Dotson and Members Dennis and Johansen participated.)

Supplemental backpay proceeding at Birmingham, 27 March 1985. Adm. Law Judge Lawrence W. Cullen's supplemental decision issued 3 September.

* * *

Taylor Stone d/b/a Eastone of Ohio, Inc. (9-CA-19499; 277 NLRB No. 187) McDermott, Ohio. 14 January. The Board found that the Employer violated the Act by refusing since 15 March 1983 to recognize and bargain with Teamsters Local 159 as the exclusive representative of its production and maintenance employees. The Board agreed with the contention of the General Counsel that Taylor was a "successor" to

Eastone and was therefore obligated to bargain with the Union on request.

Eastone had operated the plant from June 1979 until June 1982, during which the Union was certified. Following an economic strike that commenced in March 1982, Eastone went out of business in May 1982. Taylor commenced operation of the plant in January 1983.

The record showed that the Employer was engaged in the same business operations, at the same plant, producing the same product, with the same equipment as the predecessor employer. The Employer's employees performed the same jobs, under the same general working conditions, as did Eastone's employees. Taylor's general supervisor was employed by Eastone as a supervisor, and Taylor dealt with the majority of the same suppliers and customers as Eastone. The Board also pointed out that all of the Employer's unit employees were former employees of the predecessor.

(Members Dennis, Johansen and Stephens participated.)

Charges filed by Teamsters Local 159; complaint alleged violation of the Act's Section 8(a)(1) and (5). Case transferred directly to the Board on 9 January 1984.

* * *

Hunter and Walker, Inc. (7-CA-24882; 278 NLRB No. 1) Detroit, Mich. 16 January. The Board granted the General Counsel's motion for summary judgment, and found the Employer violated the Act by unilaterally modifying its collective bargaining agreement with Service Employees Local 79 by refusing to add the names, addresses, social security numbers, and dates of hire of omitted employees to the union-furnished checkoff lists. The Board also found the Employer in violation by refusing to remit to the Union the dues the Employer deducted from the pay of employees who signed authorizations.

The complaint allegations were undisputed as the Employer failed to file an answer.

The Board ordered the Employer to provide the Union with the contractually required names, addresses, social security numbers, and dates of hire of employees whose names do not appear on the union-furnished checkoff lists. The Employer was also ordered to make the Union whole by transmitting to it the full amount of union dues that the Employer was required

to withhold pursuant to the collective-bargaining agreement, with interest.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Service Employees Local 79; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 4 November 1985.

* * *

Lockheed Shipbuilding and Construction Company (19-CA-15002, et al.; 278 NLRB No. 6) Seattle, Wash. 16 January. The Board agreed with an administrative law judge's conclusion that the Employer violated the Act by unilaterally implementing and enforcing a pulmonary function and audiometric screening program for the purpose of denying employment to new employees, and actually denying employment to James O. Branson, George O. McDonnell and Clarence Spurgeon.

The Employer acted in derogation of its bargaining obligation to Electrical Workers (IBEW) Local 46 and Boilermakers Local 104, with which Lockheed had a collective-bargaining agreement.

In agreeing with the judge's rejection of the Employer's defense that OSHA regulations required it to use the results of the pulmonary functions test in the manner that it did, the Board said that it was addressing the merits of the defense "only to a limited extent." The Board had previously rejected this same OSHA defense in Lockheed Shipbuilding Co., 273 NLRB No. 25 (1984), in which the lawfulness of the Employer's use of the tests in precisely the same manner was litigated.

The Board found no new evidence to persuade it that the defense had any more merit in the present case than it had in the previous case. Therefore the Board found it unnecessary to rely on the judge's conclusion that the Employer agreed to find jobs for the tested employees regardless of the test results. Similarly, the Board reached no conclusion regarding the Employer's obligation to reassign other employees or to take other steps to create job vacancies for these employees. The Board explained that it had already denied the Employer's motion for clarification of its decision and order in the earlier proceeding, leaving all such issues to compliance proceedings.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Clarence Spurgeon, George O. McDonnell and James O. Branson, Individuals; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Seattle, 12 March 1985. Adm. Law Judge William J. Pannier III's decision issued 9 July.

* * *

Rockwell International Corp. (10-CA-20815; 278 NLRB No. 13) Norcross, Ga. 16 January. The Board agreed with an administrative law judge that the Employer violated the Act by threatening Kathy Denaple, a member of Communications Workers Local 3263, that if Denaple was involved with the Union it would hurt her work record, by later issuing a written warning and eventually firing Denaple for her protected concerted activity.

Denaple had been asked for assistance by one of six employees facing impending discharge; her conversation with fellow workers and with management about the discharges was not only on behalf of other employees, but was in fact authorized by at least one of them, the judge found.

The judge remarked that the Employer's characterization of Denaple's conduct as "disruptive behavior" was "nothing more than a euphemism for Denaple's concerted activity in talking to other employees about the six discharges which had occurred that morning." The judge concluded that the Employer failed to carry its burden of establishing that the same conduct would have been made even in the absence of the protected conduct.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Communications Workers Local 3263; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Atlanta, 10-11 June 1985. Adm. Law Judge Philip P. McLeod's decision issued 5 September.

* * *

International Association of Machinists; Machinists District 91 and its Lodge 707 (39-CB-596; 278 NLRB No. 8) North Haven, Conn. 15 January. The Board affirmed an administrative law judge's finding that the Unions violated the Act by cancelling the membership of Wayne Gilbert after Gilbert distributed election campaign leaflets to members of Local 707 critical of that union's incumbent administration. The Unions' unlawful action

was also taken in retaliation for Gilbert's filing unlawful labor practice charges against the Unions and testifying against them at a hearing conducted by the Board, it was found.

The judge found that the Unions knew that their actions could cost Gilbert his job. He concluded that the Unions through their actions jeopardized Gilbert's employment and violated their fiduciary duty toward Gilbert as a union member and an employee in the bargaining unit represented by them.

Chairman Dotson noted that he would find the evidence--District 91's authority to control certain activities of Local Lodge 707 and the mere presence of District 91's representative at a Local Lodge 707 meeting at which action was taken against Gilbert--insufficient to make the district liable for the local's conduct.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Wayne Gilbert; complaint alleged violation of the Act's Section 8(b)(1)(A). Hearing at Hartford, 15 November 1984. Adm. Law Judge Harold B. Lawrence's decision issued 10 June 1985.

* * *

Monroe Transport, Inc. (5-CA-17160; 278 NLRB No. 15) Big Stone Gap, Va. 17 January. Granting summary judgment, the Board found that the Employer violated the Act by failing to continue to honor the terms and conditions of its contract with Mine Workers District 28 and Local 6354.

Specifically, the Board held, the Employer unlawfully failed to remit deducted union dues and initiation fees to the Union, and failed to provide health insurance coverage for bargaining unit employees.

Summary judgment was granted on Employer failure to file an answer to the complaint.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Mine Workers District 28, Local 6354; complaint alleged violation of the Act's Section 8(a)(1), (5) and 8(d). General Counsel's motion for summary judgment filed 23 October 1985.

* * *

The Community Hospital at Glen Cove (29-RC-4833; 278 NLRB No. 18) Glen Cove, N.Y. 17 January. In this supplemental proceeding, the Board vacated a representation election held 2 April 1980 in a maintenance unit and dismissed the petition filed by Teamsters Local 810.

The Board's decision was based on a Regional Director's application of the disparity-of-interests test set forth in St. Francis Hospital (St. Francis II), 271 NLRB 948 (1984). The Regional Director found that the interests of the petitioned-for unit of all full-time and part-time skilled and plant maintenance employees and those of the Employer's other nonprofessional employees were not sufficiently disparate to warrant a separate maintenance unit.

(Chairman Dotson and Members Dennis, Johansen and Babson participated.)

* * *

The Gateway Theatre Corporation d/b/a Senator Theatre, Capitol Hill Cinemas (5-CA-16270; 277 NLRB No. 186) Washington, D.C. 14 January. As did an administrative law judge, the Board dismissed allegations that the Employer violated the Act by withdrawing recognition from Theatrical Stage Employees and Moving Picture Operators Local 224. It reversed the judge on another allegation and found that the Employer unlawfully discharged three projectionists.

The Board found that the Employer and the Union had agreed in June 1983 that the Employer would be free to "walk away" after approximately six months if the Employer so desired. Accordingly, the Board held, the Employer was exercising a right created by its agreement with the Union when, on 20 March 1984, it terminated its relationship with the Union.

The Board further concluded that, having lawfully terminated its relationship with the Union, the Employer was free to alter terms and conditions of employment without bargaining. Therefore, by lowering projectionists' wages after terminating the relationship with the Union, the Employer breached no bargaining obligation and did not violate the Act, the Board held.

Three projectionists were discharged because of the Employer's hostility to the Union, the Board concluded. It thus held unlawful the Employer's action.

(Members Dennis, Babson and Stephens participated.)

Charges filed by IATSE Local 224; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing 18-20 September 1984. Adm. Law Judge Thomas A. Ricci's decision issued 24 December 1984.

* * *

Amoco Oil Company (13-CA-24455; 278 NLRB No. 3) Whiting, Ind. 16 January. The Board agreed with an administrative law judge that the Employer violated the Act by requiring that Thomas D. Adam and John Spotten participate in employer investigatory interviews without representation by their union, Oil, Chemical and Atomic Workers Local 7--1, which had been requested by both employees, when they had reasonable ground to believe that the matters to be discussed might result in their being the subject of disciplinary action.

The judge concluded that union representatives were available prior to the interviews but were not called by the company. It was further noted by the judge that Adam and Spotten were unable to contact their representatives themselves because of the unavailability of outside telephone service, the "mandatory" overtime orders which they received, and the imminence of the interviews.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Oil, Chemical and Atomic Workers Local 7--1; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Chicago, 14 March 1985. Adm. Law Judge Howard I. Grossman's decision issued 31 May.

* * *

Cuello Industries, Inc. d/b/a Scroll Casual A Wholly Owned Subsidiary of Sunline Industries, Inc. (12-CA-11380; 278 NLRB No. 5) Miami, Fla. 16 January. The Board agreed with an administrative law judge that the Employer violated the Act when it refused to recognize and bargain with Steelworkers as the exclusive representative of its production and maintenance employees.

The judge determined that Cuello was a legal successor to Scroll based on the factors traditionally relied upon by the Board in making such findings--business operations; physical plant; work force; jobs and working conditions; supervisors; machinery, equipment and methods of production; and products and services.

Additionally, the judge found that the Union enjoyed a continued majority status from Cuello's start-up through the Union's demand for recognition.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Miami, 22 January 1985. Adm. Law Judge Robert A. Gritta's decision issued 7 May.

* * *

Greater Lebanon Hotel Enterprises, Inc., t/a Quality Inn-Lebanon Valley (4-CA-15201; 278 NLRB No. 2) Lebanon, Pa. 17 January. On motion for summary judgment, the Board held that the Employer violated the Act by refusing since 18 June 1985 to bargain with Bakery and Confectionery Workers Local 464 as the exclusive bargaining representative of housekeeping and kitchen employees.

The Board agreed with the General Counsel that all material issues had been decided previously. The Board accordingly granted summary judgment, stating: "All issues raised by the company were or could have been litigated in the prior representation proceeding. The company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Bakery and Confectionery Workers Local 464; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 30 October 1985.

* * *

Foote & Davies, Inc. (10-CA-18431; 278 NLRB No. 12) Doraville, Ga. 17 January. The Board agreed with an administrative law judge that the Employer violated the Act by failing and refusing to award unreinstated striker Spencer Smith a position as first pressman on 16 July 1982, and again in January 1983, because of his union activity. Smith had made an unconditional offer to return to work on 16 July 1982 at the end of an economic strike which he honored in sympathy.

The Board noted that the contract between the Employer and Pressmen Local 8 gave the employee with the greatest departmental seniority "first consideration" for promotion and recall purposes, and Smith had greater departmental seniority than either of the employees awarded first pressman positions.

The Board stated: "It is well settled that when a vacancy occurs for which a returning striker is qualified, he is entitled to be considered for this position on the same basis as any other employee, unless the employer can show a legitimate business reason for not doing so." Finding no such business reason, the Board concluded the Employer was violating the Act.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Pressmen Local 8; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Atlanta, 27 January 1983. Adm. Law Judge Howard I. Grossman's decision issued 13 September 1983.

* * *

Drummond Coal Company, Inc. (10-CA-19565; 277 NLRB No. 177) Jasper, Ala. 13 January. The Board dismissed allegations that the Employer violated the Act when, without consulting Mine Workers District 20, the Employer closed its central repair shop in Jasper, transferred the repair work, and laid off the shop employees.

Turning to another matter and deferring to an arbitrator's award, the Board dismissed an allegation that the Employer violated the Act by failing to bargain with the Union over the effects of its decision. The Board found that the standards for deferral set forth in Olin Corporation, 268 NLRB 573 (1984) and in Spielberg Mfg. Co., 112 NLRB 1080 (1955) were met.

Concerning the transfer of repair work from the central repair site to onsite mine repair shops, the Board found that the decision to close and transfer work turned on the absence of significant offsite repair work caused primarily by a fundamental change in the nature and direction of the company's operations. It noted that the decision did not turn on labor costs, although, the Board said, that factor may have been a consideration in the decision-making

process. Accordingly, relying on Otis Elevator Co., 269 NLRB 891 (1984), the Board held that the Employer was not obligated to bargain over its decision.

Member Dennis agreed that the Employer had no duty to bargain with the Union, based on the analysis set forth in her concurring opinion in Otis Elevator.

The complaint was dismissed in its entirety.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Mine Workers District 20; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Birmingham, 22-23 December 1983. Adm. Law Judge Howard I. Grossman's decision issued 24 April 1984.

* * *

Reeves Brothers, Inc. (11-CA-7824, et al., 11-RC-4592; 277 NLRB No. 153) Cornelius, N.C. 13 January. The Board adopted an administrative law judge's findings that the Employer unlawfully discharged Kenneth Wiggins for sympathizing with the Clothing and Textile Workers; denied Fred Wright work on 6 December 1978; threatened employees with discharge, plant closure, and more rigid enforcement of company rules if employees selected the Union; solicited employees to persuade others to vote against the Union; informed employees they did not have to meet with agents of the Board; and otherwise coerced employees in the exercise of their rights under the Act.

Election objections were sustained and the 16 December 1978 election which the Union lost was set aside. Since the General Counsel failed to demonstrate that the Union ever enjoyed majority status the Board declined to issue a bargaining order; instead, it directed that a second one be held.

Reversing the judge on one issue, the Board held that the Employer did not violate the Act by telling leadmen--whom the judge found were supervisors--that "when this thing is over, the very ones that started it will be somewhere else." In reversing the judge, the Board relied on Parker-Robb Chevrolet, 262 NLRB 402 (1982) in which the Board found that no "incidental or secondary effects" of discharge or discipline of a supervisor are so chilling to employee rights to warrant an exception to the exclusion of supervisors from the Act's coverage. The Board found this reasoning to apply here.

Also reversing the judge on another matter, the Board found that an increase in the number of uniforms available to employees did not constitute an unlawful grant of benefit. What the Board termed a "nominal subsidy" did not rise to the level of a "benefit" to influence employees' freedom of choice in an election, the Board ruled.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by the Clothing and Textile Workers and Individual; complaint alleged violation of the Act's Section 8(a)(1), (3), (4) and (5). Hearing at Statesville, on dates in September and October 1979, April 1980, and January 1981. Adm. Law Judge Richard L. Denison's decision issued 30 March 1982.

* * *

American Stores Packing Company, A Div. of Acme Markets, Inc. (17-CA-11178, 11255; 277 NLRB No. 190) Lincoln, Neb. 14 January. The Board dismissed allegations that the Employer violated the Act by refusing to furnish Food and Commercial Workers Local 22 with information the Union requested concerning a new contract, an announced decision to close the plant, and the effects of the closing on unit employees. It found that the Union had waived its right to bargain about the matters.

The Board agreed with an administrative law judge that the Employer unlawfully refused to pay a cost-of-living adjustment to wages required under the collective-bargaining agreement.

The judge had denied a motion to amend the complaint to allege that American Stores Packing Company and Acme Markets were a single integrated enterprise. Contrary to the judge, the Board found that although the complaint did not specifically allege that the two entities were a single employer, the pleadings raised the issue and it was fully litigated; reviewing the evidence, the Board concluded that American Stores Packing and Acme Markets met all Board's criteria for single employer status.

Turning to another issue, the Board concluded contrary to the judge that an allegation that the requested information was necessary for bargaining about an Employer decision to subcontract unit work was fully litigated. The Board found, however, that a letter of intent contained in the contract between the Employer and the Union granted the Employer the right unilaterally to remove all bargaining unit work. Thus,

the Board held, the Union waived any right it might have had to bargain about the decision to close the plant and subcontract unit work.

The Board further found that the Union had no right to the requested information for bargaining about a new contract or about the effects of the decision to close the plant. Once the Employer decided to close the plant and lay off the unit employees, it had no further duty to bargain about a new contract, the Board said. It added that, as to effects bargaining, it did not appear that this bargain was the actual basis for the Union's information request.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Food and Commercial Workers Local 22; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Lincoln on dates in December 1982. Adm. Law Judge Gerald A. Wacknov's decision issued 22 April 1983.

* * *

Dillingham Tug & Barge Corporation and Inlandboatmen's Union of the Pacific, Marine Division--Longshoremen's and Warehousemen's Union, Hawaii Region (37-CA-2282, 37-CB-584; 278 NLRB No. 19) Honolulu, Hawaii. 17 January. The Board adopted an administrative law judge's decision that the Union violated the Act by causing the Employer to discharge Francis Keane for nonpayment of union dues, when Keane had been suspended from union membership and had no obligation to pay those dues.

The Employer violated the Act, it was found, by discharging Keane at the Union's request. The Employer either knew, or should have known, that the Union contention that Keane had been restored to full membership was false, the judge ruled.

The Board noted that the judge in his decision cited a 1984 decision by an administrative law judge that the Union violated the Act by attempting to have the Employer discharge Keane for nonpayment of dues after he was suspended for having exercised his rights under Section 7 of the Act. In the 1984 decision, the judge had found that the Union's action was motivated by Keane's having supported a rival union. The Board noted that decision has been affirmed by the Board (276 NLRB No. 141 (1985)).

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Francis Keane; complaint alleged violation of the Act's Section 8(a)(1) and (3) and 8(b)(1)(A) and (2). Hearing at Honolulu, 7 February 1985. Adm. Law Judge James M. Kennedy's decision issued 9 May.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Springfield Electric Service Co., Inc. (Electrical Workers (IBEW) Local 453), Springfield, Mo. 13 January. 17-CA-12672; JD-2-86, James L. Rose, Adm. Law Judge

H. A. Satin Co., Inc. (Clothing and Textile Workers), Grove Hill, Ala. 15 January. 15-CA-9750; JD-(ATL)-2-86, William N. Cates, Adm. Law Judge

Howard Johnson's Motor Lodge (Steelworkers), Youngstown, Ohio. 16 January. 8-CA-17892, 8-RC-13110; JD-3-86, Mary Ellen R. Benard, Adm. Law Judge

E.I. DuPont de Nemours and Co. (Individual), Wilmington, Del. 17 January. 4-CA-14820; JD-11-86, Frank H. Itkin, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

American Sunroof Corp., a division of ASC, Inc. (7-RD-2251), Gibraltar, Mich. 8 January. Full-time and part-time production employees shall vote for representation by Teamsters Local 376, or for no representation.

TRW, Inc., Cutting Tools Division (10-RD-940), August, Ga. 8 January. Hourly production and maintenance employees including production machinist I, II and IV, inspector, H.T. Tec/Con. Inspector, distribution utility, machine utility, product marker/handler, printer/wrapper, maintenance general mechanic A, B and maintenance technician shall vote for representation by the Auto Workers, or for no representation.

Flav-O-Rich, Inc. (11-RC-5337), Winston-Salem, N.C. 13 January. Wholesale milk salesmen shall vote for representation by the Communications Workers, or for no representation.

Lockheed Space Operations, a subsidiary of Lockheed Corp. (31-RC-5960), Vandenberg Air Force Base, Calif. 13 January. Electronic technicians, mechanical technicians, machinists, thermal protection system mechanics, inspectors, welders, technician trainees and helpers shall vote for representation by Plumbers Local 306; by Machinists District Lodge 727; or by neither.

Las Vegas Golf Club (31-RC-5981), Las Vegas, Nev. 9 January. Full-time and regular part-time ground maintenance, irrigation, shop, and cart mechanics shall vote for representation by Teamsters Local 995, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2001

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

20 - 24 JANUARY 1986 (W-2001)

NEWARK PUBLIC LIBRARY

FEB 1 9 1986

U. S. GOVT. PUBS.
DEPOSITORY 322

CASES SUMMARIZED

BASF Wyandotte Corp.	Rensselaer, N.Y.	5
Bailey Distributors	Bronx, N.Y.	10
Brink's Armored Car, Inc.	San Jose and Benicia, Calif.	1
Carpenters 46 Northern California Counties Conference Board	Sacramento, Calif.	6
Decasper Corp.	Huntington, W. Va.	7
Electronic Data Systems International Corp.	Hato Rey, P.R.	5
Hancor, Inc.	Findlay, Ohio	1
Longshoremen (ILWU) Locals 13, 63, 10 and 34	Los Angeles, Calif.	8
Machinists District Lodge 99, Local Lodge 1198	Fort Fairfield, Me.	9
Painters Local 277 (Del E. Webb New Jersey, Inc.)	Atlantic City, N.J.	3
Rood Industries, Inc.	Sturgis, Mich.	11
Service Merchandise Co., Inc.	Nashville, Tenn.	3

LR 1.15/2:

Shopmen's Local Union No. 539	Birmingham, Ala.	4
Theatrical Stage Employees (IATSE) Local 41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.)	Atlanta, Ga.	7
Willis (O.L.), Inc.	Martinez, Calif.	2

OTHER CONTENTS

List of Decisions of Administrative Law Judges 12

List of Directions of Elections by Regional Directors 12

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Hancor, Inc. (8-CA-17842; 278 NLRB No. 30) Findlay, Ohio. 23 January. In accord with an administrative law judge, the Board found that the Employer violated the Act by terminating employees Merle Shank and Milton Ward because they had engaged in concerted activity protected by the Act, and because it wished to discourage other employees from engaging in such activities. Ward and Shank were two employee volunteers in the participative management program called the "quality circle" program.

The judge found that this activity was concerted due to the fact that Shank and Ward were solicited by fellow drivers to volunteer for the program, and evidence showed that the pair acted as the representatives of the other employees while at the meetings. The judge rejected the Employer's defense that the two were discharged because each displayed "an uncooperative and divisive attitude." The judge therefore ordered the two employees reinstated and made whole for any loss of earnings sustained as result of the Employer's unlawful conduct.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Milton D. Ward, an Individual; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Findlay, Ohio, 7-8 May 1985. Adm. Law Judge Claude R. Wolfe's decision issued 30 August 1985.

* * *

Brink's Armored Car, Inc. (20-RC-15839; 278 NLRB No. 16) San Jose and Benicia, Calif. 22 January. The Board concluded that there were no improprieties warranting the setting aside of the election of Armored Car Employees Union Local No. 1 as employees' collective bargaining representative. The Employer had alleged that employee David Silvey was disenfranchised because of the Board agent's failure to mail him a package containing his mail ballot.

The Employer relied on the assertions of one of its representatives that at the time of the ballot count he observed a voting package in the Board agent's possession with Silvey's name written on the envelope.

The Board found, however, that the package was intended for another employee, James Sanders, but that Sanders had arranged for Silvey to pick up the package for him. Noting that the laboratory conditions surrounding

an election may be more easily destroyed in mail balloting than in manual voting, the Board stated, "We do not approve of permitting one individual to pick up a mail ballot for another potential voter." In this case, however, because the voting package never left the Board agent's possession, the Board concluded that the integrity of the election was not compromised.

The Board thus affirmed the Regional Director's decision to overrule the election objection and issue a certification of representative.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

O.L. Willis, Inc. (32-CA-7372; 278 NLRB No. 29) Martinez, Calif. 23 January. The Board affirmed an administrative law judge's decision that the Employer violated the Act by failing to notify Teamsters Local 315 it intended to close its Martinez, California, facility, thus depriving the Union of an opportunity to bargain concerning the effects of that closing on employees represented by the Union.

Accordingly, the judge granted a limited backpay order as provided in Transmarine Navigation Corporation, 170 NLRB 389 (1968), observing that this remedy seeks to make employees whole for their losses to a limited degree, and is designed to restore at least some economic inducement for an employer to bargain as the law requires. The Employer accordingly was ordered to pay employees their normal wages from five days after the date of this decision until one of these conditions is met: (1) the Employer bargains to agreement on subjects pertaining to the closing; (2) an impasse is reached; (3) the Union fails to request bargaining within five days of Employer notice of desire to bargain; or (4) the Union fails to bargain in good faith.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 315; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Oakland, 15 October 1985. Adm. Law Judge William L. Schmidt's decision issued 7 November 1985.

* * *

Painters Local 277 (Del E. Webb New Jersey, Inc.) (4-CB-4941; 278 NLRB No. 27) Atlantic City, N.J. 22 January. The Board agreed with an administrative law judge that the Union violated the Act by causing Del E. Webb New Jersey, Inc. to discharge Edward W. Pygatt. An additional violation was found in the Union's threat to request the discharge of Pygatt if he failed to pay the monies the Union claimed were owed by Pygatt.

The judge observed that the Board has consistently held that a union violates the Act when it causes the discharge of an employee for nonpayment of dues during a period of time when the union could not lawfully compel membership as a condition of employment. Here, the judge noted, the Union demanded dues for a period of time when Pygatt was unemployed. He further held unlawful the action against Pygatt because, he said, the Union failed to give Pygatt adequate notice of his dues obligations after he acquired work.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Edward W. Pygatt, an Individual; complaint alleged violation of the Act's Section 8(b)(1)(A) and (2). Hearing at Absecon, 20 March 1985. Adm. Law Judge Bruce C. Nasdor's decision issued 12 August 1985.

* * *

Service Merchandise Company, Inc. (26-CA-8333; 278 NLRB No. 23) Nashville, Tenn. 23 January. Chairman Dotson and Member Johansen held that the Employer violated the Act when it discharged warehouse worker Cliff Blagburn, along with local and over-the-road truck drivers, and subcontracted truckdriver work because employees engaged in activities supporting the Service Merchandise Drivers Association.

The panel majority pointed to several occasions on which the Employer expressed its opposition to drivers' representation by an outside bargaining agent, which, it held, served to evince the Employer's animus toward the Union.

To remedy the violations, the Board ordered the Employer to reestablish its private trucking operations, reinstate its local and over-the-road truckdrivers, as well as employee Blagburn, make these employees whole for loss of pay, and enpunge from its files references to the discharge of these employees.

Member Dennis would approve a settlement upon which the Employer and Union agreed because she would find that it satisfied the standards set forth in her dissenting opinion in Carpenters Conference Board 46 (Arntz Contracting), 274 NLRB No. 181 (3 March 1985).

Chairman Dotson and Member Johansen held that the proposed out-of-Board settlement was "a wholly inadequate vehicle for effectuating the policies of the Act."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Service Merchandise Drivers Association; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Nashville on dates between 17 November 1980 and 14 January 1981. Adm. Law Judge Elbert D. Gadsden's decision issued 1 July 1981.

* * *

Shopmen's Local Union No. 539 (10-CB-4530; 278 NLRB No. 24) Birmingham, Ala. 22 January. The Board agreed with an administrative law judge that the Union violated the Act by refusing to give effect to valid membership resignations from Dwight A. McDonald, Jr. and Bryan H. McDonald, employees of Zurn Industries, Inc. In a related matter, the Board affirmed the judge's finding that by attempting to cause the employer to withhold dues of the employees who had effectively resigned from the Union, the Union violated the Act.

The judge quoted from the Board's decision in Machinists Local 1414 (Neufeld Porsche-Audi), 270 NLRB 1330 (1984), where the Board noted, "When a Union seeks to delay or otherwise impede a member's resignation, it directly impairs the employee's Section 7 right to resign or otherwise refrain from union or other concerted activities." In addition to the judge's order to the Union to accept the employee resignations, the Board ordered that the employees be reimbursed for any dues that had been unlawfully collected.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Bryan H. McDonald, an Individual; complaint alleged violation of the Act's Section 8(b)(1)(A). Hearing at Birmingham, 19 June 1985. Adm. Law Judge Philip H. McLeod's decision issued 12 September.

* * *

Electronic Data Systems International Corporation (24-CA-4773, et al.; 278 NLRB No. 14) Hato Rey, P.R. 22 January. The Board upheld an administrative law judge's unfair labor practice findings, including the discriminatory mass discharge of nine workers, and directed a second election to determine if employees desired to be represented by Teamsters Local 901.

In addition to the illegal terminations, the Employer violated the Act by coercively interrogating employees concerning their union activities; threatening employees with reprisals; threatening employees with business closure and loss of employment if they selected the Union; and telling employees not to discuss the union election campaign during a break period. Many of the violations occurred during the critical election period and thus were found to have interfered with the results of the Board election held 14 June 1983.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Emillo Rodriguez, an Individual; complaint alleged violation of the Act's Section 8(a)(1), (3) and (4). Hearing at Hato Rey, 15-19 October 1984. Adm. Law Judge Richard A. Scully's decision issued 20 August 1985.

* * *

BASF Wyandotte Corporation (3-CA-11270, et al.; 278 NLRB No. 28) Rensselaer, N.Y. 22 January. The Board agreed with an administrative law judge that the Employer violated the Act when it failed to continue in full force and effect the terms of its collective bargaining agreement with Chemical Workers Local 227 by failing to honor the section of the contract which permitted the Union president and/or secretary paid time off to an aggregate of 4 hours each day for the purpose of conducting union business during normal working hours on company property.

Noting that the union time clause constituted a mandatory subject of bargaining, the judge determined that the unilateral change in that clause violated the Employer's duty to bargain in good faith.

The judge additionally found that the Employer violated the Act by reducing the work hours of Joseph La Mountain and Roger Scales. As a direct outgrowth of the unlawful unilateral conduct of refusing to honor the union

time clause, La Mountain and Scales were no longer permitted to receive 8 hours pay--6 working hours and 2 hours union time.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Chemical Workers Local 227; complaint alleged violation of the Act's Section 8(a)(1), (3), (4) and (5). Hearing at Albany, 11-14 April and 9 May 1983. Adm. Law Judge Steven Davis' decision issued 15 February 1984.

* * *

Carpenters 46 Northern California Counties Conference Board (20-CB-6546; 278 NLRB No. 21) Sacramento, Calif. 21 January. The Board agreed with an administrative law judge who dismissed a complaint alleging the Union violated the Act by refusing to bargain in good faith with Refrigeration Design Contractors. The judge found that no good cause was shown why the issues raised by the complaint should not be deferred to the broad grievance and arbitration provisions of the applicable collective-bargaining agreement.

The Union has, over the years, entered into a series of contracts with the Building Industry Association of Northern California, the most recent of which is effective from 16 June 1983 through 15 June 1986. The Employer, in March 1980, executed a memorandum agreement with the Union, which was physically attached to the master agreement then in effect. The memorandum agreement provided that the contract could be terminated if proper notice was received 60 days prior to June 15 "of any succeeding year." The Employer, in a letter on 29 March 1985, informed the Union that it was terminating the agreement.

The judge rejected the argument of the Employer and the General Counsel that deferral was not appropriate because there was a question of whether or not a contract existed. The judge held that even if the agreement expired on 15 June 1985, "the dispute arose during the term of the contract and the grievance and arbitration procedures would survive the expiration of the contract as to this dispute."

The Board found it unnecessary to rely on cases like Nolde Bros., Inc. v. Bakery Workers Local 358, 430 U.S. 243 (1977), cited by the judge, because "the instant case involves a dispute which clearly arose during the term of the contract."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Refrigeration Design Contractors; complaint alleged violation of the Act's Section 8(b)(3). Hearing at San Francisco, 23 July 1985. Adm. Law Judge Jay R. Pollack's decision issued 16 August.

* * *

Theatrical Stage Employees (IATSE) Local 41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.) (10-CB-4351, 4369; 278 NLRB No. 4) Atlanta, Ga. 21 January. The Board held that the Union violated the Act when it deleted Hilary Henkin's name from a job referral system, and changed Samuel B. Glover's job classification because these employees worked outside the referral system.

The Board found that by taking this action against the employees, the Union effectively changed the job referral system from one that did not prohibit external employment to one that did prohibit such employment. The Union unlawfully applied the modified system to diminish Henkin's and Glover's job referral opportunities by removing from the "A" list, determined the Board.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Hilary Henkin and Samuel B. Glover, Individuals; complaint alleged violation of the Act's Section 8(b)(1)(A) and (2). Hearing at Atlanta, 2-3 October 1984. Adm. Law Judge Hutton S. Brandon's decision issued 17 December 1984.

* * *

Decasper Corporation (9-CA-22009, 9-RC-14689; 278 NLRB No. 22) Huntington, W. Va. 22 January. Upholding an administrative law judge's unfair labor practice findings, the Board issued as a remedy an order requiring the Employer to cease illegally interrogating and threatening employees and creating an impression of surveillance of employee activities for the Ladies Garment Workers, Upper South Department.

The Board also agreed with the judge that Employer misconduct interfered with an election held 16 May 1985 and warranted the direction of a second election.

(Members Johansen, Babson and Stephens participated.)

Charges filed by ILGWU, Upper South Department; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Huntington, 14-15 August 1985. Adm. Law Judge Lowell Goerlich's decision issued 21 October.

* * *

Longshoremen (ILWU) Locals 13, 63, 10 and 34 (21-CC-1326, et al.; 278 NLRB No. 20) Los Angeles, Calif. 24 January. On court remand, the Board reconsidered its 1974 decision that the Pacific Maritime Association (PMA) and the Respondent Unions violated Section 8(e) of the Act by entering into the 1970 and 1972 Container Freight Station Supplements, and that the ILWU and its Locals 13 and 63 violated Section 8(b)(4)(i) and (ii)(B) of the Act by attempting to implement the 1970 Supplement (208 NLRB 994).

That decision had been remanded in light of NLRB v. Longshoremen ILA, 447 U.S. 490 (1980), in which the Supreme Court remanded two other cases to the Board for reconsideration of earlier Board decisions finding that the Rules on Containers and their enforcement violated the Act.

In the instant proceeding, the Board stated that for a work preservation agreement to be lawful it must (1) have as its objective the preservation of work traditionally performed by employees represented by the union and (2) be directed at work which the contracting employer has the power to give to the employees. The Board found that the work in dispute was "the initial loading and unloading of cargo within 50 miles of a port and out of containers." The Board held that this work was the functional equivalent of the traditional and historical work performed by longshoremen at the pier, and therefore concluded that the Supplements had a legitimate work preservation objective.

As to the second criteria, "the right-of-control test," the Board found that the PMA did not have the power to assign to bargaining unit employees the work of stuffing and unstuffing containers owned by non-PMA members, because these nonmembers were not party to the agreement and their employees were not represented by the ILWU.

In conclusion, the Board found that to the extent the 1970 and 1972 Supplements apply to containers owned by steamship companies that are not members of PMA, or which they have leased from a source other than members of PMA, PMA and Respondent Unions violated Section 8(e) of the Act. By inducing

and encouraging employees of PMA members not to handle containers stuffed by non-ILWU labor, regardless of who owned the containers, Respondents ILWU and its Locals 13 and 63 violated Section 8(b)(4)(i) and (ii)(B) of the Act, the Board further held.

Since the record showed that Respondent Unions' refusal to handle cargo in an attempt to enforce the Supplements was directed at containers owned or leased by PMA-member steamship companies, the Board found this conduct not to be violative of Section 8(b)(4)(i) and (ii)(B).

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

Machinists District Lodge 99, Local Lodge 1198 (1-CB-6092, 1-UD-196; 278 NLRB No. 25) Fort Fairfield, Me. 22 January. The Board agreed with an administrative law judge that the Union unlawfully threatened to have 125 employees discharged, and actually caused the discharge of nine employees of Interstate Food Processing Corp.

The Union demanded the discharges when the employees failed to pay dues and initiation fees for June 1984.

The judge found that the Union's actions in demanding payment of the fees were unlawful. The 1981-1983 contract, which contained union security provisions, had expired and the employees were under no obligation to pay dues or other fees to the Union, he said. Although a new contract had been signed 1 June 1984, any demand for payment before 1 July 1984 would have been premature and unlawful, the judge added. He thus held that the demand for payments covering June 1984 and the accompanying threat of discharge for nonpayment violated the Act.

The actual discharges of nine employees at the demand of the Union likewise violated the Act, the judge additionally ruled.

Since the Union's conduct was found to have interfered with a union shop deauthorization election held 18 October 1984, that election was set aside and a second election was directed. The election had resulted in a 79-53 vote in favor of retaining the Union's union shop authority.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Interstate Food Processing Corp.; complaint alleged violation of the Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Presque Isle, 4-5 February 1985. Adm. Law Judge George F. McInerny's decision issued 31 July 1985.

* * *

Donald Browne d/b/a Bailey Distributors (2-CA-18022; 278 NLRB No. 17) Bronx, N.Y. 21 January. Deferring to an arbitrator's award, Chairman Dotson and Member Johansen dismissed allegations that the Employer violated the Act by applying the terms and conditions of a collective-bargaining agreement only to employees who were members of Teamsters Local 812, by discriminating against Timothy Nivens because he was not a union member, and by constructively discharging Nivens for engaging in protected concerted activity. Member Dennis, dissenting, would not defer to the arbitration award.

An administrative law judge had concluded that the arbitration award should not be deferred to because, he found, (1) the contractual issue presented to the arbitrator was not factually parallel to the unfair labor practice issue, and (2) neither the facts or the issue concerning the alleged constructive discharge was presented to the arbitrator. The Board majority noted, however, that the contractual issue--whether Nivens was employed as a helper and thus was entitled to the benefits established in the contract--was factually parallel to the statutory question whether Nivens was employed as a helper and, if so, if the Employer refused to apply the terms of the agreement to him and discharged him because he requested contractual benefits.

Chairman Dotson and Member Johansen further found that the arbitrator was presented with ample testimonial evidence as to Nevins' employment relationship with the company. They concluded that the arbitrator was generally presented with the facts relevant to the statutory issue. Chairman Dotson and Member Johansen thus held that deferral was appropriate.

Member Dennis would find that one of the Spielberg criteria for deferral--that "the proceedings appear to have been fair and regular," was not met. In this regard, she pointed to the conflict of interest between the Union and Nevins. That conflict, she said, was underscored by a lawsuit for damages filed by Nevins and another grievant against both the Employer and the Union. Member Dennis stated that she believed "that, because of conflicts of interest in the instant case, the integrity of our deferral policy is best preserved by not deferring."

Chairman Dotson and Member Johansen said, "contrary to our dissenting colleague, the General Counsel has not demonstrated that 'actual and potential conflicts of interest' rendered the arbitration proceedings not fair and regular."

(Chairman Dotson and Members Johansen and Dennis participated.)

Charges filed by Timothy Nevins, an Individual; complaint alleged violation of the Act's Section 8(a)(1), (2) and (3). Hearing at New York, 21 June and 7 July 1982. Adm. Law Judge Robert T. Snyder's decision issued 3 January 1983; his supplemental decision issued 25 June 1984.

* * *

Rood Industries, Inc. (7-CA-22930, 23394; 278 NLRB No. 26) Sturgis, Mich. 22 January. The Board adopted an administrative law judge's findings that the Employer violated the Act by coercively interrogating an employee; threatening an employee with discharge because he supported Machinists District Lodge 117; implying to employees that support for the union was futile; threatening to close the plant if the Union were successful in organizing employees in its October 1983 drive; and otherwise coercing employees in the exercise of their rights under the Act.

Violations found also included threatening employees with a rule prohibiting employees from sitting while working and with discharge after three absences if the Union succeeded, and implying promises to liberalize the attendance point system in order to dissuade employees from supporting the Union in a Board-held representation election.

In agreeing with the judge that the Employer, through its president, violated the Act by advising employees that he would not run an organized shop, Member Johansen concluded that the president's remarks constituted a threat of reprisal rather than a warning about the futility of joining or supporting a union.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Machinists District Lodge 117; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Sturgis, 16-18 October 1984. Adm. Law Judge Leonard M. Wagman's decision issued 11 July 1985.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Washington Beef Producers (Food and Commercial Workers Local 529A), Yakima, Wash. 10 January. 19-CA-12276, et al.; JD-(SF)-1-86, Clifford H. Anderson, Adm. Law Judge

Molded Acoustical Products, Inc. (Teamsters Local 773), Easton, Pa. 17 January. 4-CA-14794; JD-8-86, Wallace H. Nations, Adm. Law Judge

Philip A. Hunt Corp. (Teamsters Local 251), East Providence and Lincoln, R.I. 21 January. 1-CA-22734; JD-14-85, Thomas D. Johnston, Adm. Law Judge

Certainteed Corp. (Glass, Pottery, Plastics and Allied Workers and its Local 260), Athens, Ga. 21 January. 10-CA-19298, et al.; JD-(ATL)-1-86, William N. Cates, Adm. Law Judge

Chem-Nuclear System, Inc. (Oil, Chemical and Atomic Workers), Barnwell, S.C. 23 January. 11-CA-11697; JD-(ATL)-5-86, J. Pargen Robertson, Adm. Law Judge

Tube Craft, Inc. (Steelworkers Local 8703), Cleveland, Ohio. 23 January. 8-CA-18371; JD-386-85, Robert W. Leiner, Adm. Law Judge

National Fire Protection, Inc. and Mutual Sprinkler Contractors and Engineers, Inc. (Road Sprinkler Fitters Local 669), Philadelphia, Pa. 23 January. 4-CA-13814(E); JD-15-86, James L. Rose, Adm. Law Judge

Dr. Olinda Floro (Individual), Coraopolis, Pa. 24 January. 6-CA-18461; JD-12-86, Michael O. Miller, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Voss Steel Corp. (7-RC-17876), Taylor, Mich. 16 January. Full-time and regular part-time production and maintenance employees shall vote for representation by Voss Steel Employees Union; by Teamsters Local 299; or by neither.

Burnside-OTT Division of Military Aviation Helicopter Maintenance Services Projects (15-RC-7221), Whiting Field, Fla. 16 January. Employees shall vote for representation by American Federation of Government Employees Local 1960, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2002

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

27 - 31 JANUARY 1986 (W-2002)

NEWARK PUBLIC LIBRARY

MAR 3 1986

U. S. GOVT. DOCS.
DEPOSITORY 328

CASES SUMMARIZED

American Federation of Government Employees	Washington, D.C.	14
Auto Workers Local 376	Windsor and Bloomfield, Conn.	10
Bell Foundry Co.	South Gate, Calif.	4
Children's Palace	Miamisburg, Ohio	5
Coalite, Inc.	Brilliant, Ala.	14
Corson and Gruman Co.	Washington, D.C.	8
Electrical Workers (IBEW) Local 1547	Milne Point, Alaska	1
Farm Boy Food Mart	Louisville, Ky.	6
Fourjay Industries, Inc.	Dayton, Ohio	2
Graphic Communications District Council 2	City of Industry, Calif.	12
Ida Lace, Inc.	Bronx, N.Y.	3
Iron Mountain Forge Corp.	Farmington, Mo.	11
Keokuk Area Hospital	Keokuk, Farmington and Montrose, Iowa	9

LR 1.15/2:

Lassen Community Hospital, A Div. of Eskaton Health Corp., Div. of Eskaton	Susanville, Calif.	12
M & C Vending Co., Inc. and its wholly owned subsidiary ADA Automatic Sales Co., Inc.	Teaneck, N.J.	6
Matlack, Inc.	Lansdowne, Pa.	2
Mine Workers District 30 and Local 1834	Millard, Ky.	10
Nathan's Furniture Store of Hazleton, Inc.	West Hazleton, Pa.	4
Painters Local 829	New York, N.Y.	5
Peng Teng	New York, N.Y.	13
Southwest Forest Industries, Inc., Los Angeles Container Division	Santa Fe Springs, Calif.	1
U.S. Pollution Control, Inc.	Salt Lake City, Utah	7
United Technologies Corp.	Middletown, Conn.	8

OTHER CONTENTS

List of Decisions of Administrative Law Judges 15

List of Directions of Elections by Regional Directors 16

General Counsel Memo: Adjusting the Board's Interest Rate to 10 Percent

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Electrical Workers (IBEW) Local 1547 (19-CB-5382; 278 NLRB No. 32) Milne Point, Alaska. 27 January. The Board held that the Union violated the Act by conducting proceedings based on internal union charges and/or taking disciplinary action against Donald Stebbins because of his actions as a representative of Telon Electric Corporation for purposes of collective bargaining or the adjustment of grievances.

The appropriate test, an administrative law judge noted, was whether the Union's sanctions may have adversely affected Stebbins' performance of his collective-bargaining or grievance-adjustment tasks and thereby coerced and restrained the Employer contrary to the Act. The Board agreed that such a possibility existed in this case.

Additionally, the Board agreed with the judge's decision that the Union violated the Act by fining Terry Callander for actions done by him when he was no longer a member of the Union. The judge determined that Callander's letter to the Union sufficiently conveyed his intent to resign.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Telon Electric Corporation; complaint alleged violation of the Act's Section 8(b)(1)(A) and (B). Hearing at Anchorage, 11 June 1985. Adm. Law Judge Frederick C. Herzog's decision issued 19 September.

* * *

Southwest Forest Industries, Inc., Los Angeles Container Division (21-CA-22812; 278 NLRB No. 31) Santa Fe Springs, Calif. 27 January. The Board agreed with an administrative law judge that the Employer violated the Act by making unilateral changes in the terms and conditions of employment of unit employees represented by Graphic Communications District Council #2, Local 388.

Contrary to the judge, the Board issued a make-whole order restoring the status quo ante, the normal remedy where an employer has made unlawful unilateral changes in its employees' terms and conditions of employment.

The judge, citing Dependable Maintenance Co., 274 NLRB No. 37 (22 February 1985), found that such a remedy was unnecessary because he concluded that the Union would not have resumed bargaining even if the Employer had given sufficient notice of the changes.

The Board noted, however, that the changes had not been the subject of any bargaining prior to the Employer's unlawful implementation of them, as had been the case in Dependable Maintenance, and that the Union linked resumption of bargaining to the redress of the alleged violation. Therefore, unlike in Dependable Maintenance where there may not have been any doubt of the union's bargaining position after

the employer committed its unfair labor practice, the Board concluded, the judge's finding here that the Union would not have bargained with the Employer even absent the unfair labor practice was purely speculative.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Graphic Communications District Council #2, Local 388; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Los Angeles, 2 October 1984. Adm. Law Judge Clifford H. Anderson's decision issued 13 March 1985.

* * *

Matlack, Inc. (4-CA-14833; 278 NLRB No. 36) Lansdowne, Pa. 27 January. The Board agreed with an administrative law judge's conclusion that the Employer violated the Act by failing to recognize and bargain in good faith with Bakery Workers Local 6 in a unit of truckdrivers and mechanics. The judge found that the Employer was a "successor employer," and that the previous employer had recognized Bakery Workers Local 6.

The judge rejected the argument that the drivers and mechanics should be accreted into the existing Matlack work force represented by the Teamsters. The judge found these employees had not lost their separate identity in that they do not interchange with other Matlack personnel; they are geographically separate; and are not even integrated into the Matlack central dispatch system. Under Matlack's contract with Con Agra, unit employees perform flour hauling services for Con Agra.

The judge found the Employer also violated the Act by recognizing Teamsters Locals 773 and 384 as the exclusive bargaining agent of the driver and mechanic employees, despite the fact that the Teamsters did not represent a majority of the employees in the unit. Finally, the judge held that the Employer unlawfully deducted initiation fees and dues from the unit employees on behalf of the Teamsters.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Bakery Workers Local 6; complaint alleged violation of the Act's Section 8(a)(1), (2), (3) and (5). Hearing at Philadelphia, 17-18 June 1985. Adm. Law Judge Frank H. Itkin's decision issued 23 October.

* * *

Fourjay Industries, Inc. (9-CA-21633; 278 NLRB No. 43) Dayton, Ohio. 29 January. The Board affirmed the decision of an administrative law judge that the Employer violated the Act by discharging Tara Gardner and Marilyn McKinney after they had concertedly complained to the Employer about their working conditions.

Rejecting Employer reasons for the terminations as pretextual, the judge found the Employer acted in order to discourage other employees from engaging in protected concerted activities.

The Board agreed with the judge's order granting reinstatement and lost earnings to the employees, but decided that a narrow, rather than broad, cease-and-desist order was appropriate. The judge provided that the Employer should cease and desist from interfering with, restraining or coercing employees in the exercise of their Section 7 rights, "In any other manner...." The Board modified the judge's order to read, "In any like or related manner...."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Tara S. Gardner, an Individual; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Dayton, 23 April 1985. Adm. Law Judge William F. Jacobs' decision issued 26 June.

* * *

Ida Lace, Inc. (2-CA-21110; 278 NLRB No. 35) Bronx, N.Y. 29 January. The Board held that the Employer violated the Act by refusing to bargain with Teamsters Local 210. The Employer admitted that it ignored Union bargaining requests but argued the Union's certification was invalid based on an election objection which the Board overruled in the representation proceeding.

Rejecting this argument, the Board noted that the Employer had raised only issues that were or could have been litigated in the prior representation proceeding. The Board stated that the Employer did not "offer to adduce at a hearing any newly discovered and previously unavailable evidence with respect to those issues, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding."

The Board also disagreed with the Employer's contention that the Union's request was invalid because the unit which the Union described differed from that the Board certified. The Board found that while omitting a specific reference to shipping and receiving employees, the request clearly referred to the certified unit. The Board concluded that the Union's request thus could not reasonably be construed as one for bargaining in a unit other than the unit the Board certified.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 210; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 15 October 1985.

* * *

Nathan's Furniture Store of Hazleton, Inc. (4-CA-15233; 278 NLRB No. 34) West Hazleton, Pa. 28 January. The Board granted the General Counsel's motion for summary judgment, finding that the Employer violated the Act by refusing to bargain with Teamsters Local 401 after the Union had been certified as the bargaining representative of warehousemen, truck driver and furniture finishers.

The Employer's denials that the unit was appropriate, and that the Union was the exclusive representative for the unit, were viewed by the Board as issues that were or could have been litigated in a prior representation proceeding. Thus, the Employer was not entitled to relitigate these issues.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 401; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 1 November 1985.

* * *

Bell Foundry Company (21-CA-24052; 278 NLRB No. 44) South Gate, Calif. 29 January. Granting the General Counsel's motion for summary judgment, the Board held that the Employer violated the Act by refusing to bargain with Teamsters Local 848 after the Union had been certified as the exclusive collective-bargaining representative of production and maintenance employees.

The Employer contended that the Board's delay in directing a hearing on its objection in the underlying representation case amounted to a denial of due process and that a hearing was necessary to determine what effect the delay may have had on the testimony of the Employer's witnesses in the representation proceeding. The Employer further contended that a high turnover rate among its unit employees afforded it a reasonable basis for doubting the Union's majority status.

The Board found, however, that these issues were or could have been litigated in the prior representation proceeding, and that the Employer was thereby precluded from relitigating them.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 848; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 10 October 1985.

* * *

Child World, Inc. d/b/a Children's Palace (9-CA-22434; 278 NLRB No. 39) Miamisburg, Ohio. 31 January. The Board granted the General Counsel's motion for summary judgment, concluding that the Employer violated the Act by refusing to bargain with Food and Commercial Workers Local 1099.

The company admitted its refusal to bargain, but contended that the certified unit was inappropriate for bargaining because it was effectively merged into a unit that included employees from another store; that department managers should be excluded from the unit; and that the election was rendered invalid because of supervisory involvement in the union campaign.

The Board rejected these arguments because all issues raised by the Employer were or could have been litigated in the prior representation proceeding. The Board concluded that the Employer did not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor did it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Food and Commercial Workers Local 1099; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 12 November 1985.

* * *

Painters Local 829 (2-CC-1553; 278 NLRB No. 46) New York, N.Y. 31 January. In this second supplemental decision, the Board dismissed allegations that the Union unlawfully exerted coercive pressure on a nautral employer which lacked control over the work in dispute.

In a 1979 decision and order (243 NLRB 27) and in a 1983 supplemental decision and order (267 NLRB 858), the Board found the Union in violation of the Act. In the first supplemental decision, the Board held that a violation of the Act was established since the Union failed to rebut the General Counsel's prima facie showing "by establishing that it made reasonable good-faith efforts to ascertain whether the employer on which it exerted pressure was a neutral employer and that it was denied access to this information or deliberately misled."

The Court of Appeals for the District of Columbia Circuit held, however, that the Board must either explicitly find that Local 829 had a forbidden secondary object or it must dismiss the proceeding. In order to find that the union had a secondary object, the court said, the Board must have before it new, credible evidence to support its

inference that the union knew that Theatre Techniques, Inc. possessed absolute contractual control over the disputed work.

The Board thus afforded the parties an opportunity to submit statements of position as to the existence of "new, credible evidence." Since the Union asserted it had no additional evidence, and no other party filed a statement of position, the Board accepted the court's opinion as the law of the case and dismissed the complaint.

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

Larry Chapman, A Sole Proprietor, d/b/a Farm Boy Food Mart (9-CA-22016; 278 NLRB No. 58) Louisville, Ky. 31 January. The Board affirmed an administrative law judge's finding that the Employer violated the Act by instructing its employees on 9 and 10 May 1985 to report any instances of coercion in the signing of an authorization card; and by soliciting on 10 May, during an organizational campaign of Food and Commercial Workers Local 227, the employees' complaints about their benefits and impliedly promising to resolve such complaints.

However, the judge found that the Employer did not violate the Act by reducing the work hours of Gregory Murray. The judge found that the cause for the reduction was the derogatory remarks previously made by Murray concerning the conduct of Larry Chapman, the owner. The judge credited evidence that these remarks "infuriated" Chapman, and supported his argument that the reduction was not due to his animus toward the Union.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Food and Commercial Workers Local 227; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Louisville, 13 August 1985. Adm. Law Judge Thomas D. Johnston's decision issued 23 October.

* * *

M & C Vending Co., Inc. and its wholly owned subsidiary ADA Automatic Sales Company, Inc. (22-CA-12031, 13214; 278 NLRB No. 47) Teaneck, N.J. 31 January. The Board agreed with an administrative law judge's decision that the Employer violated the Act when it bypassed Electronic Workers (IUE) Local 332 and dealt directly with employees by soliciting employee opinions regarding a pension fund. In addition, the judge found the Employer further violated the Act by unilaterally modifying the terms of its collective bargaining agreement with the Union when it refused to make contractually required contributions to a pension fund; reduced unit employees wages; and refused to provide the Union with a copy of an existing pension plan covering some of the unit employees.

Agreeing with the judge, the Board noted that the Employer raised its Section 10(b) defense, relating to the 6-month limitations period for filing charges, for the first time in its exceptions. The Board stated that the 10(b) proviso is a statute of limitations and is not jurisdictional. "It is an affirmative defense and, if not timely raised, is waived," the Board said.

Member Johansen agreed that, in the context of direct dealing and unilateral changes in terms and conditions of employment, the Employer's failure to satisfy its obligations to the Union's pension fund was not a mere contractual violation.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Electronic Workers (IUE) Local 332; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Newark, 19 February 1985. Adm. Law Judge Harold B. Lawrence's decision issued 27 June.

* * *

U.S. Pollution Control, Inc. (27-RC-6554; 278 NLRB No. 42) Salt Lake City, Utah. 29 January. The Board sustained a challenge to a ballot cast by Randy Shephard on a finding that Shephard did not share a community of interest with other unit employees. The 11 July 1985 election resulted in 9 votes for and 7 against representation by Teamsters Local 222, with three determinative challenged ballots.

The Board also directed the Regional Director to commingle and open the ballots of Royle Jensen (the challenge to his ballot having been overruled), and Larry Bogue. If both ballots are cast against representation by Local 222, the issue of Bogue's voting eligibility will be consolidated with a hearing scheduled in an unfair labor practice proceeding alleging Bogue's discriminatory discharge prior to the election. Then, if Bogue is found to have been lawfully discharged and thus ineligible to vote, the Regional Director will certify the Union. If Bogue, having voted against the union, is found to have been unlawfully terminated, the Regional Director will certify the election results.

In finding that Shephard is not a unit employee, the Board noted that Shephard spends approximately 50% of his time doing nonunit sales work. It also pointed out that, unlike unit employees, Shephard does not punch a timeclock, is not paid overtime, and receives sick leave benefits. Unit employees are never called upon to assist Shephard, and Shephard never performs the work of unit employees, the Board said. Accordingly, it concluded that Shephard is properly excluded from the unit as a dual function employee who does not share a community of interest with unit employees.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

Corson and Gruman Company (5-CA-6977; 278 NLRB No. 48) Washington, D.C. 31 January. The Board agreed with an administrative law judge that the paving company violated the Act by refusing to furnish Metropolitan D.C. Paving, Highway, and Construction Materials Council with information the Union requested concerning the Employer's relationship with two other companies.

Corson and Gruman had informed the Union it was going out of business. The Union, however, believed the company was still in business, and requested information concerning the relationship between the owners and supervisory personnel of the Employer and those of General Paving and Prince George's Contractors.

The judge found that the Union had a reasonable basis for at least suspecting that the three companies constituted a single employer or alter egos under the Act: long after the company purportedly went out of business, it was awarded a large contract by the District of Columbia government, the judge said. He held the Union was entitled to the information it had requested.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Metropolitan D.C. Paving, Highway and Construction Materials Council; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Washington, 6 June 1985. Adm. Law Judge Marvin Roth's decision issued 14 August.

* * *

United Technologies Corporation (39-CA-2269; 278 NLRB No. 41) Middletown, Conn. 30 January. Chairman Dotson and Member Johansen ruled that the Employer did not violate the Act by implementing a "Correct-A-Bill" program without bargaining with Machinists Local Lodge 700 over the benefit. Member Dennis would hold that implementation of the program violated the the Employer's obligation to bargain with the Union before making changes in employment terms and conditions.

"Correct-A-Bill" was part of an effort to contain spiraling employee health care costs. The program invited employees to audit their hospital and surgical center bills and to report any overcharges to the insurance carrier. Any employee reporting an overcharge would receive a payment from the Employer equal to 80% of the amount refunded to the insurance carrier.

The Board panel majority found that implementation of the program did not amount to a "material, substantial, and significant" change in the terms and conditions of employment of bargaining unit employees, and therefore, that it did not give rise to any bargaining obligation. It said that the fact that only one of 3600 bargaining

unit employees received any payment during the first 9 months of the program demonstrated the very limited impact that the program had.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Machinists Local Lodge 700; complaint alleged violation of the Act's Section 8(a)(1) and (5). Parties waived hearing before an adm. law judge.

* * *

Keokuk Area Hospital (33-RC-2623; 278 NLRB No. 33) Keokuk, Farmington and Montrose, Iowa. 27 January. The Board agreed with a Regional Director that there were no "sharper than usual" differences between the terms and conditions of employment of the hospital's registered nurses and those of the hospital's other professional employees. It accordingly held that a separate unit of registered nurses is inappropriate and that the smallest appropriate unit is an all-professional unit including registered nurses.

The Board thus directed the Regional Director to open and count the ballots cast in a 7 February 1985 election held in a unit of all professional employees at the Employer's Keokuk Area Hospital, to determine their desire for representation by the Iowa Nurses' Association.

The Regional Director applied the "disparity-of-interests" test as defined in St. Francis Hospital II, 271 NLRB 948 (1984) and found appropriate the all-professional unit. He concluded that the evidence did not establish "sharper than usual" differences or disparities between the terms and conditions of employment of registered nurses and those of other professional employees, notwithstanding the pharmacists' and medical technologists' somewhat greater educational and experience requirements and corresponding higher pay. In agreeing with the Regional Director's determination, the Board noted that the professionals share common policies and procedures and a sufficient degree of functional integration, contact, and overlap of function which warranted finding that the smallest appropriate unit for bargaining is the all-professional unit.

The Union had been certified following a 1980 election in a unit limited to registered nurses. Subsequently, the Board denied summary judgment on allegations that the Employer unlawfully refused to bargain, and remanded the case to the Regional Director for further consideration in light of the Board's then-recent decision in St. Francis Hospital II. The Regional Director revoked the Union's certification and directed an election, held 7 February 1985, in a unit of all professional employees.

(Chairman Dotson and Members Dennis, Johansen and Babson participated.)

* * *

Auto Workers Local 376 (39-CB-443, 532; 278 NLRB No. 37) Windsor and Bloomfield, Conn. 30 January. Reversing an administrative law judge's conclusion, the Board held that the Union violated the Act by threatening employees with loss of employment if they failed to pay dues in arrears. The threatening letters were distributed after expiration of the parties' collective-bargaining agreement, and the employees thus were under no union-security obligation to pay dues at that time.

In dismissing the allegation, the judge found that the letters were distributed "by clerical error," and that the Union effectively repudiated the threat.

The Board disagreed. It pointed out that the Union failed to distribute a written retraction to any of the 13 employees on the delinquent list. Instead, the Board said, the Union posted a notice concerning dues obligations and disavowed the contents of the delinquency letter at two meetings. The Board noted, however, that the notice contained no specific reference to the letters, and that the remarks at the meetings did not necessarily reach the individuals to whom the documents had been mistakenly delivered. It thus held that the Union's efforts were inadequate to effectively repudiate the delinquency letters.

Dismissed was an allegation that the Union violated the Act by making a statement that "the Union is looking into raising the reinstatement fee for those members who have not paid dues." The Board held that the Union was privileged to increase its reinstatement fees.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Emhart Industries, Hartford Div. and an Individual; complaint alleged violation of the Act's Section 8(a)(1)(A). Hearing at Hartford, 1 November 1984. Adm. Law Judge Wallace H. Nations' decision issued 28 March 1985.

* * *

Mine Workers District 30 and Local 1834 (9-CB-5676, 9-CC-1200, 1201; 278 NLRB No. 45) Millard, Ky. 31 January. The Board agreed with an administrative law judge that District 30 unlawfully executed a contract with Samoyed Energy Company, Inc., at a time when it did not represent a majority of Samoyed's employees, and unlawfully sought to enforce the union-security clause of that agreement.

District 30 and Local 1834 also unlawfully coerced Samoyed's employees by blocking ingress to and egress from the Samoyed mine site, and attempted to induce employees of two neutral companies to engage in a strike or refusal to perform services, when the object was to force those companies to cease business with Samoyed, it was found.

The dispute began when Samoyed took over operation of the Greasy Creek mine after the Greasy Creek Coal Company abandoned the mine. Members of Local 1834, who had been employed at Greasy Creek by the Greasy Creek Coal Company, began protesting when Samoyed did not hire any of 14 former Greasy Creek employees.

The judge concluded that Samoyed was not the successor of Greasy Creek Coal Company. The judge thus rejected Union claims that Samoyed was obligated to operate the mine under union conditions because Samoyed was a successor employer and that District 30 therefore did not violate the Act by executing an agreement with Samoyed. He held that District 30 violated the Act by entering into a contractual relationship with the Employer when it represented none of Samoyed's employees.

Turning to another matter, the judge found that the Respondents were responsible for the actions of the union members.

The protesters encouraged employees of TCH Coal Company and Joboner Coal Company to honor their picket lines by indicating they were protesting to cause Samoyed to sign the UMW contract and hire the former Greasy Creek employees, the judge said. Having found that the Unions were responsible for the conduct of the protesting employees, the judge held that the Unions unlawfully encouraged employees of secondary employers to engage in a job action.

Reversing the judge on one issue, the Board panel majority did not find that the union was responsible for a former Greasy Creek employee's statements threatening to "bust the heads" of Samoyed's employees. Chairman Dotson would find that the Unions were liable for those threats.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by TCH Coal Company, Joboner Coal Company, and Samoyed Energy Company, Inc.; complaint alleged violation of the Act's Section 8(b)(1)(A), (b)(2), and 8(b)(4)(i)(ii)(B) of the Act. Hearing at Pikeville, 10-12 April 1984. Adm. Law Judge Donald R. Holley's decision issued 11 January 1985.

* * *

Iron Mountain Forge Corp. (14-CA-17541, 14-RC-9880; 278 NLRB No. 38) Farmington, Mo. 27 January. The Board affirmed an administrative law judge's decision that the Employer violated the Act by coercively interrogating employees about their activities for Teamsters Local 574, by creating an impression of surveillance of employee union activities, and by threatening employees with reduced wages, harsher working conditions, and plant closure or relocation if they selected the Union to represent them.

Six leadmen were supervisors within the meaning of the Act, the judge found. He thus sustained challenges to the ballots they cast in a 14 September 1984 representation election.

The judge also sustained a Union election objection alleging that the Employer interfered with the election by threatening employees with plant removal if the Union won the election. However, since the tally of ballots showed that the Union won the election, the Board certified the Union as the collective-bargaining representative of the company's production and maintenance employees.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 574; complaint alleged violation of the Act's Section 8(a)(1). Hearing at St. Louis, 5-7 and 14 March 1985. Adm. Law Judge Claude R. Wolfe's decision issued 25 June 1985.

* * *

Graphic Communications District Council 2 (21-CB-8815; 278 NLRB No. 52) City of Industry, Calif. 31 January. The Board agreed with an administrative law judge that the Union violated the Act by demanding that Data Documents, Inc. discharge three employees for having failed to maintain membership in good standing by payment of dues after the expiration of the parties' 1981-83 collective-bargaining agreement.

The judge noted that the subsequent contract between the Union and Employer, effective 30 November 1983, required that Union members maintain their membership only during the contract's term. The three employees, however, resigned from membership in the Union two months before this contract had become effective. Nothing in the record, continued the judge, showed that their resignations had been improper or ineffective.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Ray Cole, Division Manager, Data Documents, Inc.; complaint alleged violation of the Act's Section 8(b)(1)(A) and (2). Pursuant to a stipulation for submission to an administrative law judge executed by the parties, no hearing was held. Adm. Law Judge William J. Pannier III's decision issued 12 September 1985.

* * *

Lassen Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton (20-CA-19588; 278 NLRB No. 53) Susanville, Calif. 31 January. The Board affirmed an administrative law judge's decision that the Employer violated the Act by discriminatorily maintaining and enforcing a rule requiring employees to obtain prior approval from the Employer before posting union campaign literature or notices

on its bulletin boards, and by interrogating Lisa Mojan Hogan, an applicant for employment, concerning her sympathies toward the Engineers & Scientists of California, Marine Engineers Beneficial Association.

The judge noted that under the circumstances of this case, no legitimate employer interest in limiting access to its bulletin boards outweighed the employees' Section 7 rights of communication.

The credited testimony of Hogan led the judge to conclude that under the totality of circumstances, the interrogation reasonably tended to interfere with rights guaranteed in the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Engineers & Scientists of California, Marine Engineers Beneficial Association; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Susanville, 22 August 1985. Adm. Law Judge Richard D. Taplitz' decision issued 30 October.

* * *

Kou Fu, Inc. d/b/a Peng Teng (2-CA-18216; 278 NLRB No. 50) New York, N.Y. 31 January. The Board affirmed the decision of an administrative law judge that the Employer violated the Act by failing to recall or offer to recall 11 employees of its predecessor because of their affiliation with and support of Hotel and Restaurant Employees Local 6.

The judge noted that the right of a new owner of a business not to hire any of the predecessor's former employees is limited by the proviso that such a decision not be made for discriminatory reasons, for in such a case, successorship will be found notwithstanding the change of personnel. The judge found that the Employer knew of the employees' union activity, and that a discriminatory basis for the Employer's failure to rehire most of the alleged discriminatees was found in numerous expressions of anti-Union sentiment and the unlawful pressure which the Employer exerted in order to defeat the Union in an election.

The additional unlawful conduct, determined the judge, took the form of coercive interrogations of employees; threats to close the Employer's business if the employees selected the Union to represent them; a promise of benefits in order to induce the employees to reject the Union; and threats that employees would not be recalled to or continued in their former positions of employment unless they discontinued their affiliation with the Union.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Hsueh-Wei Hsu, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at New York, 4-5 January and 8, 9, 10, 11 and 26 February 1982. Adm. Law Judge Harold B. Lawrence's decision issued 24 June 1982.

* * *

American Federation of Government Employees (5-CA-16029; 278 NLRB No. 55) Washington, D.C. 31 January. The Board held that the Employer---AFGE--- violated the Act by discriminatorily and unilaterally withholding vested vacation benefits from employees, represented by Office and Professional Employees Local 2, with scheduled annual leave prior to 14 November 1983 because they participated in a strike which began on that date.

Concluding that an administrative law judge erred in finding that scheduled annual leave was effective only upon the Employer's approval of formal leave slips, the Board determined that the process of submitting a formal leave slip to a supervisor when leave had been previously scheduled was only a ministerial step taken for bookkeeping purposes. Accordingly, the Board ordered that the Employer compensate all employees who had scheduled annual leave withheld during the 1983 leave year because of their participation in the strike, and not only those with approved formal leave slips. The determination of which employees had scheduled leave prior to the time of the strike was left to compliance.

Member Dennis found it unnecessary to decide whether the withholding of scheduled vacation leave for strikers was inherently destructive of employee rights because there was unambiguous evidence of unlawful motive for the respondent's conduct.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Office and Professional Employe s Local 2; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Washington, D.C., 4, 5, 6, 7 and 10 December 1984. Adm. Law Judge David L. Evans' decision issued 7 May 1985.

* * *

Coalite, Inc. (10-CA-20797; 278 NLRB No. 40) Brilliant, Ala. 30 January. The Board agreed with an administrative law judge that the Employer violated the Act when it unilaterally, and without bargaining to impasse with Mine Workers, discontinued the insurance coverage provided for in the Benefit Plan of the 1981 National Bituminous Coal Wage Agreement for its employees on layoff status; by refusing to timely furnish and make available to the Union information which the Union requested for use in collective-bargaining; and by refusing to make its books available to the Union to support the Employer's claim that it needed wage and benefit concessions from the Union in order to operate profitably.

The judge determined that the insurance coverage for employees in layoff status constituted a mandatory subject of bargaining. Further, the judge found, the Union did not waive its right to bargain over this subject.

The information sought by the Union was, as a matter of law, presumptively relevant and necessary, noted the judge, and the Employer was obligated to provide it to the Union. The judge rejected the Employer's contention that the Union was told that the information it requested was available at the Employer's offices.

Finally, the judge was persuaded that the words and conduct of the Employer established that it expressed, in negotiations, an inability as opposed to an unwillingness to pay wage increases. This led the judge to conclude that the Employer pleaded financial inability to meet the Union's financial demands, and that it was, therefore, obligated to make available to the Union all information pertaining to its financial condition.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Mine Workers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Brilliant, 3 June 1985. Adm. Law Judge William N. Cates' decision issued 5 September.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Teamsters Local 980 (MCA, Inc. d/b/a Universal Studios) (Individuals), Santa Rosa, Calif. 23 January. 20-CB-6024, et al.; JD-(SF)-3-86, Richard D. Taplitz, Adm. Law Judge

Arrow Sash and Door Co. (Carpenters Local 2172 and Carpenters Orange County District Council), Irvine, Calif. 23 January. 21-CA-22503, 22832; JD-(SF)-4-86, George Christensen, Adm. Law Judge

Mars Super Markets, Inc. (Food and Commercial Workers Local 27), Baltimore, Md. 27 January. 5-CA-17437; JD-19-86, William A. Gershuny, Adm. Law Judge

Auto Workers Local 1309 (International Harvester Company and Individuals), Rock Island, Ill. 28 January. 33-CB-2206, 2214, 33-CA-7158, 7162; JD-18-86, Thomas R. Wilks, Adm. Law Judge

Paint America Co. (Individual), Dayton, Ohio. 28 January. 9-CA-22345; JD-17-86, Phil W. Saunders, Adm. Law Judge

Duct-O-Wire Co. (Machinists District 10 and its Lodge 1377), Milwaukee, Wis. 28 January. 30-CA-8817; JD-(ATL)-3-86, Richard J. Linton, Adm. Law Judge

Typographers, Inc. (Typographical Union Local 16), Chicago, Ill. 29 January. 13-CA-25295; JD-22-86, Claude R. Wolfe, Adm. Law Judge

Garrett Flexible Products, Inc. (Rubber Workers Local 634), Garrett, Ind. 29 January. 25-CA-17269; JD-21-86, Elbert D. Gadsden, Adm. Law Judge

Shoppers Choice (Food & Commercial Workers Local 212), Amherst and North Tonawanda, N.Y. 29 January. 3-CA-12586; JD-(NY)-2-86, James F. Morton, Adm. Law Judge

Lehigh Portland Cement Co. (Boilermakers), York, Pa. 30 January. 4-CA-14604; JD-20-86, Arline Pacht, Adm. Law Judge

Teamsters Local 814 (Beth Israel Medical Center) (Individual), New York, N.Y. 30 January. 2-CB-9980; JD-(NY)-3-86, Jesse Kleiman, Adm. Law Judge

Operating Engineers Locals 30 and 30A (Hyatt Management Corp. of New York, Inc.), Uniondale, N.Y. 31 January. 29-CB-5776; JD-(NY)-5-86, Harold B. Lawrence, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Superior Home and Health Care, Inc. (13-RC-16813), Chicago, Ill. 24 January. Full-time and regular part-time chore/housekeepers shall vote for representation by Service Employees Local 880, or for no representation.

Carson Pirie Scott & Co. (13-RC-16806), Chicago, Ill. 23 January. Full-time and regular part-time employees shall vote for representation by Hotel & Restaurant Employees Local 1, or for no representation.

OFFICE OF THE GENERAL COUNSEL
Division of Operations Management

MEMORANDUM GC 86-1 January 27, 1986

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Joseph E. DeSio, Associate General Counsel

SUBJECT: Adjusting the Board's Interest Rate to 10 Percent

In Florida Steel Corporation, 231 NLRB 651 (1977), the Board ordered that interest on backpay and other monetary awards be computed at the "adjusted prime rate" used by t United States Internal Revenue Service in calculating interest on the underpayment or overpayment of taxes. 1/

Consistent with that decision, this is to advise you that the interest rate for the period January 1, 1986, to June 30, 1986, is 10 percent.

The following chart updates and summarizes the interest rates to be applied to backpay and other monetary remedies accruing during various periods of time:

Prior to July 1, 1975	6 percent
July 1, 1975 to December 31, 1977	7 percent
January 1, 1978 to December 31, 1979	6 percent
January 1, 1980 to December 31, 1981	12 percent
January 1, 1982 to December 31, 1982	20 percent
January 1, 1983 to June 30, 1983	16 percent
July 1, 1983 to December 31, 1983	11 percent
January 1, 1984 to December 31, 1984	11 percent
July 1, 1984 to December 31, 1984	11 percent
January 1, 1985 to June 30, 1985	13 percent
July 1, 1985 to December 31, 1985	11 percent
January 1, 1986 to June 30, 1986	10 percent

J. E. D.

1/ See also Olympic Medical Corporation, 250 NLRB 146 (1980), where the Board adhered to the interest rate formula set forth in Florida Steel.

Distribution:
Washington - Special
Regional - All Professional Employees
Release to the public

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2003

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

3 - 7 FEBRUARY 1986 (W-2003)

NEWARK PUBLIC LIBRARY

MAR 6 1986

U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Barry (Martin J.) Co.; Riehl Estate Management Co.	Baltimore, Md.	10
Bridgeport Brass Corp.	Indianapolis, Ind.	7
Carpenters Local 743, et al.	Los Angeles, Calif.	7
Evans St. Clair, Inc.	East Camden, Ark.	5
Flex Products, Inc.	Midvale, Ohio	2
Food & Commercial Workers Local 88	St. Louis, Mo.	3
Midtown Service Center, Inc.	Atlantic, Ga.	1
Midwest Motel Management Corp. of Birmingham	Birmingham, Ala.	2
National Glove Co., Inc.	Mt. Sterling, Ohio	6
Orval Kent Food Co., Inc.	Wheeling, Ill.	3
Otasco, Inc.	College Park, Ga.	4
Page Avjet, Inc.	Orlando, Fla.	8

LR 1.15/2:

Quality Aluminum Products, Inc.	Louisville, Ky.	9
Scientific Atlanta, Inc.	Atlanta, Ga.	5
Strick Welding, Fabricating and Home Improvement, Inc.	Baltimore, Md.	4
Teamsters Local 158 and Local 169	Gloucester City, N.J. and Philadelphia, Pa.	1
Westinghouse Electric Corp.	Seattle, Wash.	9

OTHER CONTENTS

List of Decisions of Administrative Law Judges 11

List of Directions of Elections by Regional Directors 12

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Midtown Service Center, Inc. (10-CA-19120; 278 NLRB No. 67) Atlantic, Ga. 31 January. The Board granted the General Counsel's motion for summary judgment on the grounds that the Employer's answer to a backpay specification failed to specifically dispute the accuracy of the gross backpay figures or provide any specific alternatives for computing the amounts of gross backpay due James Wayne Wagner as a result of his having been unlawfully discharged. Accordingly, the Board deemed the gross backpay allegations of the specification to be admitted as true.

Based upon the Employer's general denial of the allegations concerning Wagner's interim earnings, the Board ordered a hearing limited to the determination of those interim earnings.

Wagner was found to have been illegally terminated because he stated that he would go to the Board, 271 NLRB 1061 (1984).

(Chairman Dotson and Members Dennis and Johansen participated.)

General Counsel's motion for summary judgment filed 8 November 1985.

* * *

Teamsters Local 158 and Local 169 (4-CD-641, 642; 278 NLRB No. 51) Gloucester City, N.J. and Philadelphia, Pa. 31 January. After considering all the relevant factors, the Board determined that the employees of Refrigeration Distribution Center, Inc. (RDC), represented by Teamsters Local 169, are entitled to perform unpacking, defrosting, inspection, and repackaging of merchandise in the defrost room of RDC's Philadelphia facility. In addition, the Board determined that the employees of Holt Cargo Systems, Inc. represented by Teamsters Local 158 are entitled to perform unpackaging, defrosting, inspection, and repackaging of merchandise in the defrost room of Holt's Gloucester City, N.J. facility.

The Board concluded that the Employer's preference and the efficiency and economy of operation outweighed the contractual claim to the work asserted by ILA Locals 1242, 1332 and 1556. The Board noted that the ILA crew required at least three employees because each of the three locals claimed the work would not "turn to" without the other two. The Board also considered the fact that the warehouse employees represented by the Teamsters could be "cross utilized," and that warehouse employees could be taken from their regular duties whenever a container of meat arrives, and can be returned to their jobs loading, unloading, storing, and retrieving goods whenever the U.S.D.A. inspection is finished.

In contrast, the Board cited the testimony of an ILA foreman who worked in the defrost room, which corroborated the Employer's assertion that at times, when fewer containers arrive than expected or the meat does not arrive promptly, the ILA crew is left idle. RDC officials testified that the inability to use ILA labor efficiently for defrost work has resulted in a cost to RDC per container of meat greater than the handling price RDC is able to charge the importer.

(Members Johansen, Babson and Stephens participated.)

* * *

Midwest Motel Management Corp. of Birmingham (10-CA-17099; 278 NLRB No. 60) Birmingham, Ala. 31 January. The Board agreed with an administrative law judge that the Employer had failed to establish that Curtis L. Lewis incurred a willful loss of earnings during his backpay period, and therefore ordered the Employer to pay Lewis $12,181, plus interest accrued, and minus any tax withholdings required by federal and state laws.

The judge found that Lewis made a sincere and reasonable effort under the circumstances to find interim employment to mitigate the loss of income resulting from his discriminatory discharge by the Employer (261 NLRB 719). The judge noted that Lewis' testimony that he continued to contact the Alabama State Employment Service approximately twice a week during the entire backpay period was uncontradicted.

(Members Dennis, Johansen and Babson participated.)

Supplemental hearing at Birmingham, 1 May 1985. Adm. Law Judge Phillip P. McLeod's supplemental decision issued 3 July.

* * *

Flex Products, Inc. (8-CA-15870; 278 NLRB No. 59) Midvale, Ohio. 31 January. Granting the General Counsel's motion for summary judgment, the Board held that the Employer violated the Act by refusing to recognize and bargain with Iron Workers Local 662 as the exclusive representative of its employees, unilaterally laying off approximately 15 employees, and unilaterally changing a job classification, thereby removing the job from the bargaining unit and resulting in the layoff of Thomas Strimbu.

In granting summary judgment, the Board concluded that the issues raised by the complaint were able to be decided without a hearing.

The Employer's contention that the General Counsel was attempting to relitigate the issue of the Union's continued representative status was rejected by the Board. Rather, the Board found that the complaint in this case concerned Employer acts that were different from those considered in an earlier case, Flex Plastics, 262 NLRB 651 (1982).

The Board also rejected the Employer's contention that the allegations concerning the layoffs of the 15 employees was barred by the 6-month filing limitation of the Act's Section 10(b). The Board found that although the original charge, filed within 6 months of the alleged date the layoffs occurred, did not assert that the Employer unilaterally laid off employees, the unilateral layoff conduct alleged in the complaint was closely associated with the unilateral conduct alleged in the charge. The timely filed charge therefore, was sufficient to support the additional incidents of unilateral conduct covered by the complaint, the Board ruled.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Iron Workers Local 662; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 6 September 1983.

* * *

Food & Commercial Workers Local 88 (14-CB-6306, et al.; 278 NLRB No. 68) St. Louis, Mo. 31 January. The Board agreed with an administrative law judge's dismissal of a complaint on the grounds that the issues raised in the complaint--that the Union engaged in conduct that restrained or coerced employees in the exercise of their rights to engage in, or refrain from collective activity; that the Union refused to bargain in good faith with Dierberg's Markets, Inc., The Kroger Company, and National Super Markets, Inc.; and that the Union failed to follow the procedure set out in the Act's Section 8(d) before terminating or changing its existing contracts with the Employers--should be deferred to the grievance-arbitration provisions of the collective-bargaining agreements between the Union and the Employers.

The judge reasoned that the issues before him were proper subjects for the grievance-arbitration procedure and that deferral of this case to the arbitral forum would best effectuate the purposes and policies of the Act.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Dierberg's Markets, Inc., The Kroger Company, National Super Markets, Inc.; complaint alleged violation of the Act's Section 8(b)(1)(A) and (3). Hearing at St. Louis, 21 March 1985. Adm. Law Judge Lowell Goerlich's decision issued 16 May.

* * *

Orval Kent Food Company, Inc. (13-CA-24910; 278 NLRB No. 57) Wheeling, Ill. 31 January. The Board agreed with an administrative law judge that the Employer violated the Act by promulgating, maintaining, and enforcing a discriminatory no-talking rule; by threatening discharge or other reprisals against employees because of their activities on behalf of Teamsters Local 738; and by promising a wage increase in the event the employees were no longer represented by the Union. Contrary to the judge, the Board found that the Employer's failure to consider or to grant the maintenance employees merit increases was not unlawful under the Act.

The Board noted that discretionary merit increases are a mandatory subject of bargaining and that the Employer presented a proposal to the Union regarding management's right to grant merit increases, but that proposal was rejected. In these circumstances, concluded the Board,

it had not been established that the Employer's failure to grant merit increases was due to union animus rather than to the parties' failure to reach agreement on this issue.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Teamsters Local 738; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Chicago, 10-11 June 1985. Adm. Law Judge Nancy M. Sherman's decision issued 15 August.

* * *

Strick Welding, Fabricating and Home Improvement, Inc. (5-CA-16205; 278 NLRB No. 64) Baltimore, Md. 7 February. The Board granted the General Counsel's motion for summary judgment, concluding that the net backpay due Alfonzo Wiggins was as stated in the computations of the backpay specification. In the underlying decision reported at 272 NLRB No. 43, the Board had ordered the Employer to make whole Wiggins for his losses resulting from the Employer's unfair labor practices.

As the Employer failed to file an answer to the specification, the allegations in the backpay specification were deemed to be admitted as true.

In light of the Employer's failure to file an answer, Chairman Dotson would regard this proceeding as being essentially a default judgment which is without precedential value.

(Chairman Dotson and Members Dennis and Johansen participated.)

General Counsel's motion for summary judgment filed 29 August 1985.

* * *

Otasco, Inc. (10-RC-13215; 278 NLRB No. 54) College Park, Ga. 31 January. Directing an election in a unit limited to the Employer's over-the-road drivers, the Board rejected Teamsters Local 523's contention that the unit should also include two local drivers, Alan Duck and Tim Parrott, because they performed over-the-road driving duties in addition to their local driving duties.

Since these two local truckdrivers were expressly classified as being in a unit represented by Retail, Wholesale and Department Store Union Local 315 under collective-bargaining agreement with the Employer, the Board found that this collective-bargaining agreement barred an election within the unit covered by the agreement. The Board

concluded, therefore, that the agreement barred the inclusion of dual-function employees Parrott and Duck in the unit sought to be represented by Local 523.

(Members Johansen, Babson and Stephens participated.)

* * *

Evans St. Clair, Inc. (26-CA-10194, 26-RC-6566; 278 NLRB No. 65) East Camden, Ark. 6 February. The Board agreed with an administrative law judge that the Employer violated the Act when supervisor Frank Bubblis told an employee that Gary Don Green would be discharged because of his activity on behalf of the Rubber Workers, and when supervisor Carl Tate told two employees that benefits would be frozen for a year if the Union won the election. The Board, however, reversed the judge's finding that Green was illegally terminated.

The Board found that Green was legitimately discharged for insubordination after physically threatening plant manager John Coons, and shouting at him. Contrary to the judge, the Board determined that Green's behavior was not provoked by Coons, reasoning that Coons' use of the term "Boy," in reference to Green, was not conduct so extreme as to excuse Green's conduct. It was further noted that Coons called Green "Boy" after Green threatened him with physical violence.

Absent evidence of any conduct by Coons which could be found to have precipitated Green's threatening outburst, the Board concluded that no "culpable provocation" occurred here that would shield Green from discharge.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Rubber Workers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Camden, 9-12 August 1983. Adm. Law Judge Robert T. Wallace's decision issued 21 November 1984.

* * *

Scientific Atlanta, Inc. (10-RC-12957; 278 NLRB No. 69) Atlanta, Ga. 7 February. The Board set aside a 29 June 1984 election, in which employees rejected representation by Electrical Workers (IBEW) Local 1609, on a finding that the Employer engaged in four separate instances of objectionable conduct in the critical preelection period.

First, the Board found, the Employer engaged in disparate treatment of prounion and antiunion employees when it acquiesced in an antiunion employee's distribution of campaign materials for a two-week period leading up to the election, while the same rights were denied those who supported the Union.

The Board also held objectionable the Employer's giving its campaign material to eligible voters to distribute in work areas during worktime. To require employees to disseminate antiunion literature violates their right to engage in or refrain from engaging in activity for any party during an election campaign, the Board said.

Additionally, the Board found objectionable a supervisor's remarks to an employee that he "would be sorry that he got involved in the union activities."

Another statement by a supervisor, to the effect that the Union had already hurt employees by holding back benefits they would have already gotten, was also held to be objectionable conduct.

Since there was evidence that a significant number of unit employees were effected by the Employer's conduct, the Board ruled that the Employer's conduct was far from de minimis. The election was set aside and a second directed.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

National Glove Company, Inc. (9-CA-22472; 278 NLRB No. 66) Mt. Sterling, Ohio. 7 February. On motion for summary judgment, the Board held that the Employer violated the Act by refusing since 27 September 1985 to bargain with Molders Local 45 as the bargaining representative of all full and part-time production and maintenance employees at the Employer's two Mt. Sterling facilities. The Employer argued that certification was improper because the two-facility unit was improper.

However, the Board agreed with the General Counsel that all material issues had been decided previously, and thus granted summary judgment.

In addition, the Board found that the Employer violated the Act by refusing to provide the Union with information concerning fringe benefits, such as insurance programs and sick, accident and vacation pay.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Molders Local 45; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 22 November 1985.

* * *

Bridgeport Brass Corporation (25-CA-17408; 278 NLRB No. 11) Indianapolis, Ind. 31 January. On motion for summary judgment, the Board held that the Employer violated the Act by refusing to bargain with the Steelworkers since 23 July 1985.

Following an election held 30 November 1984, the Union was certified as bargaining representative of all office clerical, plant clerical and technical employees working at the Employer's Indianapolis facility. The Board agreed with the General Counsel that all material issues had been decided previously, and therefore found that the Employer has not raised any issue that was properly litigable. It accordingly granted the General Counsel's motion for summary judgment.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 16 September 1985.

* * *

Carpenters Local 743, et al. (31-CE-180; 278 NLRB No. 62) Los Angeles, Calif. 31 January. The Board adopted an administrative law judge's decision that 43 Carpenters Locals violated the Act by entering into and enforcing an agreement requiring Longs Drugs, Inc. to hire only union contractors or subcontractors for its construction projects, and by applying those contractual provisions to a construction site.

The principal issue raised in this case was whether the Employer, under the circumstances presented, was "an employer within the construction industry" within the meaning of the first proviso of Section 8(e) of the Act, thus permitting the Unions to enforce certain contract or subcontract provisions in the collective-bargaining agreement between the Employer and the Unions. The Employer owns or leases and operates approximately 27 drug stores in the geographic area covered by the agreement. When the Employer has a new facility built, it engages a general contractor to perform the on-site construction work, but employs finish carpenters to install fixtures.

The judge concluded that the actual construction work the Employer reserved to itself was of such limited scope that the Employer did not become an "employer in the construction industry" within the meaning of the construction industry proviso to Section 8(e) of the Act. He thus held that the Unions violated the Act by seeking to enforce the provisions of the contract requiring the Employer to hire only union contractors or subcontractors at its construction projects.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Longs Drug Stores, Inc.; complaint alleged violation of the Act's Section 8(e). Hearing at Los Angeles, 11 July 1985. Adm. Law Judge Gerald A. Wacknov's decision issued 27 September.

* * *

Page Avjet, Inc. (12-CA-10277, 10363; 278 NLRB No. 63) Orlando, Fla. 31 January. The Board adopted an administrative law judge's findings that the Employer unlawfully maintained a no-solicitation/no-distribution rule which prohibited employees from engaging in oral solicitations and distributions on company property during working hours, interrogated employees, threatened employees with plant closure if the Machinists were successful in its organizing effort, and issued a warning to a leading union proponent.

The Board noted that in finding the Employer's no-solicitation/no-distribution rule to be unlawfully broad, the judge relied on TRW Bearings, 257 NLRB 442 (1981), which has been overruled by Our Way, 268 NLRB 394 (1983). It held, however, that the rule the Employer promulgated, prohibiting solicitation and distribution during "working hours," was unlawful under Our Way.

In adopting the judge's finding that a statement by supervisor Jim Hodges to Angel Lopez, that he (Hodges) heard Lopez was passing out cards, did not constitute unlawful surveillance or an impression of surveillance, the Board relied particularly on the fact that Hodges had received a report that Lopez had been soliciting authorization cards during worktime and informed Lopez of this report when inquiring about the cards.

Chairman Dotson and Member Babson did not agree with the judge that a supervisor's inquiry to an employee as to whether that employee was involved with the Union "again" violated the Act. The comment was free of accompanying coercive statements, Chairman Dotson and Member Babson said. Disagreeing, Member Dennis would find that the questioning of the employee, who was not an open union adherent, was coercive and thus unlawful.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Machinists and Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Orlando, 18-19 November 1982. Adm. Law Judge Robert A. Gritta's decision issued 29 July 1983.

* * *

Westinghouse Electric Corporation (19-CA-16964, 7-CA-23546, 13-CA-24327; 278 NLRB No. 61) Seattle, Wash., Trenton, Mich. and Chicago, Ill. 31 January. Adopting an administrative law judge's decision, the Board held that the Employer violated the Act by reclassifying bargaining unit employees at its Chicago and Seattle plants and reducing their wages midterm of a contract, without bargaining with Electrical Workers (UE) Locals 1105 and 1002.

The Employer admitted that it reclassified certain employees to lower labor grades, but it claimed that it had the right to do so under provisions of its labor agreements and that it had no obligation to bargain with the UE or its locals over such matters. Essentially, the judge said, the Employer argued that the Unions had waived their right to bargain over the matter.

The judge noted that Board precedent has held that a waiver of the right to bargain over changes in wages, hours, and terms and conditions of employment must be "clear and unmistakable." Here, he found, the contract provisions did not support the Employer's claim of such a waiver. The judge thus held the Employer in violation of the Act for making unilateral changes in wages without giving the Unions an opportunity to bargain.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Electrical Workers (UE) Locals 1002, 957, and 1105; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Seattle, 18-19 December 1984, at Detroit, 30-31 January 1985, and at Chicago, 27-28 March 1985. Adm. Law Judge Walter H. Maloney's decision issued 2 July 1985.

* * *

Quality Aluminum Products, Inc. (9-CA-19005, et al.; 278 NLRB No. 49) Louisville, Ky. 31 January. The full Board held that an order to the Employer to bargain with Teamsters Local 89 was necessary to protect employee sentiment expressed when a majority of bargaining unit employees signed authorization cards. In issuing such an order, the Board noted the seriousness and pervasiveness of the Employer's unfair labor practices, the small size of the unit (approximately 18 employees), the substantial percentage of employees directly affected by the Employer's threats and layoffs, and the strong possibility of repetition of similar unfair labor practices.

An administrative law judge found, and the Board agreed, that the Employer violated the Act by laying off six employees because of their union activities, threatening employees with discharge for wearing union buttons, threatening employees with plant closure, and creating the impression of surveillance of union activities.

The Board concluded that, under the circumstances, simply requiring the Employer to refrain from unlawful conduct would not eradicate the lingering effects of the hallmark violations, and would not deter their recurrence. Among other things, the Board noted that the manufacturer of aluminum doors and windows attempted to disguise its discrimination against one-third of the unit as a "seasonal" layoff. With future seasonal layoffs likely, the employees have reason to fear a recurrence of a similar attempt, the Board said.

The Board also took note of the passage of time--three years--since the Employer engaged in its unlawful conduct. It was convinced, however, that the lasting effects of the Employer's serious conduct could not easily be eradicated by the mere passage of time. It thus found the passage of time an insufficient basis for denying the bargaining order.

In a footnote, Member Dennis agreed that a bargaining order is the appropriate remedy. She pointed to the Employer's extensive "hallmark" violations, consisting of the layoff of six employees and threats of plant closure and discharge; the small size of the unit; and the fact that five employees affected by the Employer's violations were still working in the unit at the time of hearing. Member Dennis also found that the three-year passage of time between the events of the case and the Board's decision was insufficient to deny a bargaining order.

(Full Board participated.)

Charges filed by Teamsters Local 89; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing 13-15 June 1983 at Louisville. Adm. Law Judge Russell M. King, Jr.'s decision issued 28 March 1984.

* * *

Martin J. Barry Company; Riehl Estate Management Company (5-CA-9363, 11606; 278 NLRB No. 56) Baltimore, Md. 31 January. Contrary to an administrative law judge, the Board did not find that Riehl Estate Management Company, as successor to Martin J. Barry Company, was obligated to honor a contract Barry had negotiated with Carpenters Local 974. The judge had ordered Riehl to honor the contract as remedy for Barry's unlawful refusal to execute and implement the contract.

In a 1979 decision (241 NLRB 1011), the Board found that Barry violated the Act by refusing to execute a contract setting forth the terms of an agreement reached with the Union. While that proceeding was pending before the Board, Barry ceased operations and Riehl Estate was formed by a group of investors in an attempt to salvage Barry's property management activities.

At the hearing in this case, the judge found that Riehl Estate was a successor to Barry and therefore was obligated to bargain in good faith with the Union. He also ruled that Riehl Estate was jointly and severally liable with Barry to make whole unit employees for losses suffered though Barry's refusal to execute the contract. He further directed Riehl Estate to execute and implement the agreement reached by Barry.

The Board disagreed. It found that the judge's analysis overlooked the Supreme Court's holding in H. K. Porter Co. v. NLRB, 397 U.S. 99 (1970), that the Board lacks the remedial authority to impose contractual terms involuntarily on either party to a collective-bargaining agreement. It further pointed out that the Supreme Court thereafter held in NLRB v. Burns Security Services, 406 U.S. 272 (1972), that although a successor had the statutory obligation to bargain with the union that represented the predecessor's employees, the successor had no obligation to assume the predecessor's contract with the Union. The Board therefore did not order Riehl Estate to honor the contract.

Turning to the matter of an appropriate remedy, the Board noted that the record established that Riehl Estate has expressed a willingness to bargain in good faith with the union. Such good-faith bargaining, supplemented by the joint and several backpay liability of Barry and Riehl Estate to Barry's former employees, adequately remedies Barry's unfair labor practices, the Board held.

Dismissed was an allegation that Riehl unlawfully refused to bargain with the Union.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Carpenters and its Local 974; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 30 October 1980 at Baltimore. Adm. Law Judge Benjamin Schlesinger's decision issued 14 January 1981.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Electrical Workers (IBEW) Local 357 (P-Berry Electric, Inc.), Las Vegas, Nev. 15 January. 31-CC-1843; JD-(SF)-2-86, Jerrold H. Shapiro, Adm. Law Judge

R. Waldo, Inc. and Congress of Independent Unions (Plumbers Local 562), High Ridge, Mo. 24 January. 14-CA-17440, 14-CB-6189; JD-13-86, Marion C. Ladwig, Adm. Law Judge

Eureka Stone Quarry, Inc. (Individual), Chalfont, Pa. 4 February. 4-CA-15292; JD-23-86, Frank H. Itkin, Adm. Law Judge

Blake Electric Contracting Co., Inc. (Operating Engineers Local 295-295C), Bronx, N.Y. 5 February. 2-CA-21122; JD-(NY)-8-86, Eleanor MacDonald, Adm. Law Judge

Dickerson Pont Associates, Ltd. (Service Employees Local 32E), Peeksville, N.Y. 5 February. 2-CA-20161; JD-(NY)-7-86, Eleanor MacDonald, Adm. Law Judge

Adelphi Institute, Inc. (Individual), Brooklyn, N.Y. 5 February. 2-CA-11749; JD-(NY)-4-86, Winifred D. Morio, Adm. Law Judge

Evening News Association (Teamsters Local 372), Detroit, Mich. 5 February. 7-CA-24491; JD-24-86, Robert G. Romano, Adm. Law Judge

Parkview Gardens Care Center (Auto Workers), Waterloo, Iowa. 6 February. 18-CA-9125; JD-16-86, Peter E. Donnelly, Adm. Law Judge

Storer Communications, Inc. (National Association of Broadcast Employees and Technicians), Cleveland, Ohio. 6 February. 8-CA-16852; JD-7-86, Bernard Ries, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Frank's Finer Foods, Inc. No. 2 (13-RD-1659), Geneva, Ill. 31 January. Full-time and regular part-time employees shall vote for representation by Food and Commercial Workers Local 1540, or for no representation.

Merchandising Fixtures, Inc. (18-RC-13820), Coon Rapids, Minn. 4 February. Full-time and regular part-time production and maintenance employees shall vote for representation by Teamsters Local 970, or for no representation.

Seiniger/Bloom Productions (31-RC-5987), Los Angeles, Calif. 30 January. Senior editors, trailer editors, senior assistant editors, assistant editors, and apprentice editors shall vote for representation by Theatrical Stage Employees & Moving Picture Machine Operators, or for no representation.

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Name and Address _____

_____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2004

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

10 - 14 FEBRUARY 1986 (W-2004)

NEWARK PUBLIC LIBRARY
MAR 10 1986
U. S. GOVT. PUBS.
DEPOSITORY 3/8

CASES SUMMARIZED

Allis Chalmers Corp.	Batavia, Ill.	4
Atlanta Hilton & Towers	Atlanta, Ga.	1
Burns International Security Services, Inc.	Haddam Neck, Conn.	10
Clark Equipment Co.	Rockingham, N.C.	3
Cutter Dodge, Inc.	Pearl City, Hawaii	9
Dayton Auto Electric Inc.	New York, N.Y.	4
Federated Answering Service, A Div. of Sherwood Diversified Services, Inc.	New York, N.Y.	9
Frontier Delivery, Inc. and Cedars Transport Corp.	Syracuse and Utica, N.Y.	6
IMS Mfg. Co., Inc.	Leitchfield, Ky.	2
Kentucky Fried Chicken of the Virgin Islands	St. Croix, V.I.	8
L & J Equipment Co., Inc.	Masontown, Pa.	7
Passavant Health Center	Zeliencple, Pa.	11

LR 1.15/2:

Precision Founders, Inc.	San Leandro, Calif.	8
Radio Electric Service Co.	Pennsauken, N.J.	5
Volvo White Truck Corp.	Dublin, Va.	1
Western Temporary Services, Inc. and The Classic Co., Inc.	Ft. Wayne, Ind.	6

OTHER CONTENTS

List of Decisions of Administrative Law Judges 11

List of Directions of Elections by Regional Directors 12

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

ACL Corporation d/b/a Atlanta Hilton & Towers (10-CA-20908; 278 NLRB No. 76) Atlanta, Ga. 10 February. The Board agreed with an administrative law judge's finding that the Employer violated the Act by withdrawing recognition from Firemen & Oilers Local 288 as representative of employees in its property operations department, and by thereafter refusing to bargain with the Union upon request.

The Employer argued that the unit was inappropriate because it contained employees called operators, who were actually employed as guards. Rejecting this argument, the judge noted that the operators are not entrusted with the protection of the Employer's premises, and stated, "The fact that the operators monitor, as part of their duties, panels of equipment which provide fire protection and building security information does not establish them as guards."

The Board found it unnecessary to determine this issue because even if the operators were considered guards the Employer would not be justified in withdrawing recognition from the Union because, it said, the proper procedure for determining the issue is unit clarification, not withdrawal of recognition.

The judge also concluded the Employer failed to establish either the Union's actual loss of majority status or the basis for objective considerations justifying the Employer's good-faith doubt.

Member Dennis would consider employee turnover a factor in determining the existence of objective considerations sufficient to justify withdrawal of recognition. However, considering all circumstances of the instant case, Member Dennis did not find the turnover rate dispositive.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Firemen & Oilers Local 228; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Atlanta, 24 June 1985. Adm. Law Judge Hutton S. Brandon's decision issued 6 August.

* * *

Volvo White Truck Corporation (5-CA-16998; 278 NLRB No. 81) Dublin, Va. 11 February. The Board agreed with an administrative law judge that the Employer violated the Act by discharging Douglas L. Vaught because the Employer believed that Vaught had engaged in activities on behalf of the Auto Workers.

The judge noted that although the record reflected that Vaught was not engaged in any form of union activity, the reason Vaught was discharged could be summed up by the remarks made to Vaught by supervisor Larry Hess, as they were walking to an office where Vaught was discharged, that "You should have known better than being involved with the Union."

Additional violations were found in the Employer's creating the impression among its employees that their perceived union or actual union activities were under surveillance by the Employer, and in implicit threats to employees that their employment status would be adversely affected by their perceived union activities.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Douglas L. Vaught, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Radford, 17 June 1985. Adm. Law Judge James T. Youngblood's decision issued 30 September.

* * *

IMS Manufacturing Company, Inc. (9-CA-20833; 278 NLRB No. 79) Leitchfield, Ky. 12 February. The Board agreed with an administrative law judge that the Employer violated the Act by refusing to recognize and bargain in good faith with Ladies Garment Workers Local 469 since on or about 23 March 1984. In reaching this conclusion, the judge found that the Employer is a legal successor, for labor relations purposes, to Kane Industries in the operation of the clothing manufacturing plant.

The judge in finding successor status noted that the Employer operates the plant for the same purposes as did Kane; utilizes the same manufacturing procedures; contracts with the same customer base; and employs former Kane employees who constitute a majority of its work force.

The judge also found that the Employer had no grounds for questioning the Union's majority status. The judge stated that the Employer "has failed to show that the Union had in fact lost its majority status at the time of the refusal to bargain or that the refusal to bargain was grounded on a good-faith doubt of majority support for the Union based on objective factors."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Ladies Garment Workers Local 469; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Leitchfield, 18 September 1984. Adm. Law Judge Richard H. Beddow's decision issued 5 March 1985.

* * *

Clark Equipment Company (11-CA-8746, 9454, 11-RC-4447; 278 NLRB No. 85) Rockingham, N.C. 11 February. Contrary to an administrative law judge, the full Board held that the Employer's unfair labor practices were not sufficiently egregious in nature or number to warrant issuance of a bargaining order. Since it further found that the unfair labor practices were too isolated to rise to the level of objectionable conduct affecting an election held in a unit of over 800 employees, the Board overruled the union's election objections and certified that the Steelworkers did not receive a majority of the ballots cast in a 13 July 1979 election.

As for the alleged unfair labor practices, the Board found that the Employer unlawfully interrogated three employees, threatened two of the same employees with loss of benefits or other reprisals, interfered with the distribution of campaign literature, engaged in surveillance of an employee's personal property for evidence of union activity, and, after the election, interfered with the Board's processes by advising an employee that he was not legally required to honor Board subpoenas. (Chairman Dotson noted he disagreed with findings concerning unlawful threat of lost benefits, one instance of unlawful interrogation, and unlawful surveillance.)

The Board disagreed, however, with many other of the judge's findings of violation. It noted that a significant portion of the violations found by the judge involved the distribution of eight pieces of campaign literature in the 16 days preceding the election. In excepting to the judge's findings, the Employer contended that statements it made in the leaflets in question were factually accurate, truthfully reflected the bargaining process, and were made in direct response to union promises. Finding merit to the Employer's contentions, the Board held that the leaflets did not exceed permissible campaign materials.

In refusing to adopt the judge's recommendation of a bargaining order, the Board noted the large size of the unit--800 employees--and the lack of evidence of any dissemination of the misconduct which involved only nine employees. It also pointed out that no union adherents were discriminated against for their union activities despite the fact that the campaign was an open and active event, with many employees involved and with the Employer knowing about many employees' open support for the Union. Therefore, the Board could not find that the Employer's misconduct precluded the likelihood of a fair election.

As for the Union's objections to the election, the Board considered the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors, and concluded that the misconduct did not warrant setting aside the election.

(Full Board participated.)

Charges filed by the Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Rockingham, 6 October 1980 and 26 March 1981.

* * *

Dayton Auto Electric Inc. (29-CA-9239; 278 NLRB No. 80) New York, N.Y. 13 February. The Board agreed with an administrative law judge's finding that a bargaining order was warranted under Gissel Packing Co. because the possibility of erasing the effects of extensive and pervasive Employer unfair labor practices and ensuring a fair election was slight. The misconduct affected virtually the entire work force, the Board said.

The Employer from the outset of Union activity embarked on a calculated campaign to discourage support of the Union, the Board found. It noted that the day after Auto Workers Local 259 first met with employees, the Employer unlawfully interrogated an employee about which employees wanted a union. Furthermore, the Board held, the Employer illegally discharged or laid off 7 of its 12 employees the day after the Union demanded recognition. The Board decided that even though a significant period of time had elapsed since the violations occurred, "in view of their seriousness we cannot conclude that time alone will dissipate their impact on employees."

In another matter, the Board found that the judge erred in granting the General Counsel's motion to amend the complaint to allege that the Employer unlawfully failed to reinstate unfair labor practice strikers. The Board stated, "At no time prior to the hearing did the General Counsel amend the complaint.... Indeed, at the outset of the hearing, the General Counsel stated that this was not an issue. Only later, midway through the hearing, and then 14 months after the Union's unconditional offer, did the General Counsel move to amend the complaint to include this allegation. In these circumstances, we find that the General Counsel's amendment was barred by the Sec. 10(b) 6-month period of limitations."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Auto Workers Local 259; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at New York, 2-4 May and 19-20 September 1983. Adm. Law Judge James F. Morton's decision issued 28 December 1983.

* * *

Allis Chalmers Corporation (13-CA-19918; 278 NLRB No. 82) Batavia, Ill. 13 February. The Board affirmed an administrative law judge's decision to overrule Employer objections to a representation election held 31 August 1979 and to reaffirm the Board's decision in 252 NLRB 606 (1980).

After the Board issued its 1980 decision, the Court of Appeals for the Seventh Circuit remanded the case to the Board, noting that it would not enforce the Board's order because the Board had adopted a regional director's findings and conclusions without seeing the evidence relied on by the regional director. The Board thus directed that a hearing be held on the Employer's objections to union conduct which, the Employer alleged, affected the outcome of the election.

The judge found no merit to the Employer's objections. Among Employer contentions the judge rejected were allegations that the Auto Workers throughout its campaign purposely used threats, coercion, intimidation and promises to gain support; that the Union misled employees to believe that there would be a large layoff if the Union lost; that employees were induced by bribes to wear UAW buttons; that the Union granted payment for support of the Union; and that the Union promised employees there would be no strike if the Union won the election.

The election had resulted in 96 votes for, and 81 against, representation by the union, with 2 challenged ballots.

(Chairman Dotson and Members Dennis and Stephens participated.)

Supplemental hearing 7, 30, 31 August and 16 October 1984; Adm. Law Judge Claude R. Wolfe's supplemental decision issued 15 January 1985.

* * *

Radio Electric Service Company (4-CA-10729, 11326; 278 NLRB No. 78) Pennsauken, N.J. 12 February. The Board agreed with an administrative law judge that the Employer violated the Act by unilaterally discontinuing its longstanding practice of granting employees a Christmas bonus. It further found, as did the judge, that a strike by unit employees was motivated, in part, by the Employer's refusal to grant the Christmas bonus and that the strike, therefore, was an unfair labor practice strike.

Turning to another matter, the Board reversed the judge's finding that the Employer did not unlawfully refuse to reinstate four unfair labor practice strikers who unconditionally offered to return to work after the strike.

Concerning the failure to reinstate the strikers, the Employer claimed that no jobs existed to which the strikers could return because the work they had done had been absorbed by other employees. The Board ruled, however, that the employees assigned to perform the work previously performed by the unfair labor practice strikers were, in effect, striker replacements. The Board thus held that the Employer was obligated to remove the replacements, if necessary, and to make jobs available for the four strikers on their unconditional offer to return to work.

As for the Christmas bonuses, the Employer argued that it bargained to impasse with Teamsters Local 115 about the discontinuance of this bonus and therefore, it claimed, the change did not violate the Act. The judge rejected this argument, concluding that there was no bargaining on the bonus issue and that the Employer's unilateral discontinuance and failure to pay the bonus violated the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 115; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing 12-13 April 1982 at Philadelphia. Adm. Law Judge James T. Youngblood's decision issued 16 August 1982.

* * *

Western Temporary Services, Inc. and The Classic Company, Inc. (25-CA-16549, 16550; 278 NLRB No. 73) Fort Wayne, Ind. 10 February. The Board affirmed an administrative law judge's decision granting summary judgment and holding that the joint Employers unlawfully refused a bargaining request by Retail, Wholesale and Department Store Union, Indiana Joint Board.

The judge noted that the joint Employers, through this unfair labor practice proceeding, intended to seek appellate review, otherwise unavailable to them, of Board procedures and determinations in a prior representation proceeding. The judge found that all issues the Employers raised either were or could have been raised in that representation proceeding. He accordingly granted a General Counsel motion for summary judgment, held the Employers in violation of the Act, and issued cease-and-desist and bargaining orders.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Indiana Joint Board, Retail, Wholesale and Department Store Union; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 17 December 1984 at Fort Wayne. Adm. Law Judge William A. Gershuny's decision issued 31 December 1984.

* * *

Frontier Delivery, Inc. and Cedars Transport Corp. (3-CA-12742, 12767; 278 NLRB No. 72) Syracuse and Utica, N.Y. 13 February. The Board granted summary judgment against Frontier Delivery Inc. based on undisputed allegations that it violated the Act by unilaterally taking certain actions without bargaining with Teamsters Local 182 at its Utica facility and Teamsters Local 317 at its Syracuse facility. Cedars Transport Corp., included in the consolidated complaint, was found to have violated the Act by taking unilateral action without bargaining with Teamsters Local 317, which represented the employees at its Syracuse facility.

The Board additonally found that Frontier violated the Act at both its Syracuse and Utica facilities by unilaterally failing to make proper contributions to the health insurance and pension funds of Locals 182 and 317, to pay proper wages, holiday pay, and vacation pay, and to remit dues and fees which were deducted from its employees; by closing its Syracuse and Utica terminals without prior notice to Local 317 and Local 182, respectively, and without affording the Locals an opportunity to bargain with respect to the effects of the closure; and by refusing to meet with Local 317 since 9 April 1985 and Local 182 since 25 January 1985.

The Board found that Cedars violated the Act at its Syracuse facility by unilaterally failing to pay proper contributions to the Union's health insurance and pension funds, to pay proper wages, holiday, and vacation pay, and by failing to remit dues and fees which were deducted from their employees; by closing its Syracuse terminal without prior notice to Local 317 and without affording Local 317 an opportunity to bargain with respect to the effects of the closing; and by refusing to meet with Local 317 since on or about 9 April 1985 to discuss grievances concerning employees at its Syracuse terminal.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Locals 182 and 317; complaint alleged violation of the Act's Section 8(a)(1) and (5) and 8(d). General Counsel's motion for summary judgment filed 6 November 1985.

* * *

L & J Equipment Company, Inc. (6-CA-15662; 278 NLRB No. 74) Masontown, Pa. 11 February. Upon remand from the Third Circuit Court of Appeals, the Board vacated its earlier unfair labor practice finding in this case (266 NLRB No. 29), dismissed the complaint which alleged that the Employer illegally failed to bargain with the Mineworkers as the exclusive collective-bargaining representative of its employees, revoked its prior certification of the Union, and remanded the case to the Regional Director for the direction of a new election if the Union wishes to proceed to a new election.

In view of the court's observations in NLRB v. L & J Equipment Co., 745 F.2d 224 (3rd Cir. 1984), the Board found that employee Keith Powley's references to possible future misconduct on a picket line were attributable to the Union, as was Powley's statement to Mikalik, an employee perceived by other employees as a favorite of management, to the effect that if Mikalik signed a union card union-related pressures on Mikalik might cease.

This conduct by Powley, along with the various other conduct not attributable to the Union which a hearing officer found occurred--especially an incident where a company-owned pickup truck was totally destroyed by

fire while parked in Mikalik's driveway with the word "scab" painted on the tailgate of the destroyed truck—combined to create a coercive atmosphere interfering with the employees' free choice in the election and rendering the election results invalid, the Board concluded.

(Members Dennis, Johansen and Babson participated.)

* * *

Precision Founders, Inc. (32-CA-7212; 278 NLRB No. 84) San Leandro, Calif. 12 February. The Board agreed with an administrative law judge that the Employer violated the Act by telling its employees that if Molders Local 164 came in, their pension plan would no longer be in effect, and by disparaging employees' involvement in union activities and impliedly threatening them with retaliation through loss of promotions because of their union activities.

The judge based his conclusions upon the credited testimony of production office control employee Debra Esver.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Molders Local 164; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Oakland, 9 and 17 July 1985. Adm. Law Judge Clifford H. Anderson's decision issued 12 November.

* * *

Kentucky Fried Chicken of the Virgin Islands (24-CA-4906, 4969, 24-RC-6837; 278 NLRB No. 86) St. Croix, V.I. 14 February. The Board agreed with an administrative law judge that the Employer violated the Act by unilaterally modifying practices regarding food privileges and use of store telephones; unilaterally implementing the use of a new employee manual which required the retraining of all employees; unilaterally implementing a new policy holding all packers accountable for chicken shortages; and unilaterally instituting a new insurance and health plan, all without prior notification to and bargaining with Hotel & Restaurant Employees Local 610.

The judge found that the Employer had acted at its peril by instituting the unilateral changes while election objections were pending. After rejecting the Employer's objections to the election, the judge relied upon the parties' stipulation of the facts in finding the violations.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Hotel & Restaurant Employees Local 610; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at St. Croix, 9 October 1984. Adm. Law Judge William F. Jacobs' decision issued 23 April 1985.

* * *

Cutter Dodge, Inc. (37-CA-1879; 278 NLRB No. 83) Pearl City, Hawaii. 14 February. The Board agreed with an administrative law judge's finding that the Employer was the successor of Pearl City Chrysler, an auto dealership, and therefore violated the Act by failing and refusing to recognize and bargain with ILWU Local 142, certified representative of predecessor Pearl City's employees.

The Employer argued that the Union's representative status should not be determined until the successor has employed a full complement of employees in the unit. The Employer argued that the determination of majority status should be delayed because it had not yet commenced its own new car preparation operation, nor hired the employees to operate it.

The judge rejected this argument by crediting evidence which showed the Employer "was entertaining some doubt...about the efficacy of having its own new car prep department." The judge concluded that a delay "would only serve to deprive already represented employees of the services guaranteed by the Act for an inordinate period."

In agreeing with the judge, the Board stated, "that at the time the Union requested recognition the Respondent employed a substantial and representative complement of its work force, a majority of which had previously worked for the Respondent's predecessor in the appropriate unit."

(Members Dennis, Johansen and Stephens participated.)

Charges filed by ILWU Local 142; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Honolulu, 1 April 1982. Adm. Law Judge William L. Schmidt's decision issued 28 December 1982.

* * *

Federated Answering Service, A Div. of Sherwood Diversified Services, Inc. (2-CA-19496; 278 NLRB No. 75) New York, N.Y. 10 February. The Board remanded the proceeding to the administrative law judge for further findings as to whether Marilyn McGuire acted as the Employer's agent when she assumed her role as a primary leader of a movement to decertify United Telephone Answering and Communication Local 780.

The Board found that the judge failed to consider certain evidence in reaching a conclusion that McGuire was not acting as the Employer's agent. In one incident, the Board noted, company vice president Paul Walasek told employee Debbie King that meetings would be held to discuss the Union, that she would be asked to sign the decertification petition, that McGuire would be speaking to her, and that the Union would be eliminated. Shortly thereafter, the Board said, McGuire arranged the meetings and King signed the petition in McGuire's presence.

Concerning another incident, an employee testified that Walasek told her that McGuire wanted to see her, and that McGuire then took her to lunch, asked her to list employees who might support the decertification, and encouraged her to help Walasek, the Board said.

The Board held that these and other incidents were relevant to determining whether McGuire acted as the Employer's agent. It thus remanded the proceeding to the judge to make findings concerning these incidents, and to consider whether McGuire acted as the Employer's agent in light of these findings.

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

Burns International Security Services, Inc. (39-RC-306; 278 NLRB No. 70) Haddam Neck, Conn. 14 February. The Board rejected an Employer contention that the Plant Guard Workers of America admits nonguards to membership and therefore cannot be certified as the representative of the company's guards. It directed an election in a unit of guards employed by Burns at the Connecticut Yankee Nuclear Power Station, to determine their desire for representation by the Union.

The Board noted that Burns introduced considerable evidence purporting to show that UPWGA admitted nonguards into membership and was therefore not certifiable. The Board ruled, however, that the evidence submitted by Burns did not show, and was not sufficiently probative to show, that UPGWA was not certifiable.

On another matter, Burns and the UPGWA disagreed about the supervisory status of sergeants and lieutenants. The Board held that based on their authority independently to suspend guards, lieutenants are supervisors. As for sergeants, the Board found that although their authority is limited, they do play a significant role in evaluating and disciplining guards. The Board thus held that the sergeants are supervisors, and it excluded the sergeants and lieutenants from the bargaining unit.

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

Passavant Health Center (6-RD-881, 882; 278 NLRB No. 77) Zelienople, Pa. 10 February. The Board reinstated petitions seeking to decertify Teamsters Local 536 as the collective bargaining representative of a unit of licensed practical nurses and nurses aides and of a unit of service and maintenance employees. The decertification petitions had been dismissed, subject to reinstatement on final disposition of an unfair labor practice complaint against the Employer.

The unfair labor practice allegations were settled by a non-Board settlement agreement. As part of the settlement, the Employer agreed to execute a new collective-bargaining agreement covering both units of employees. Thereafter, the Regional Director denied pending motions to reinstate the decertification petitions. He reasoned that "inasmuch as...the parties have now negotiated and executed a new collective-bargaining agreement effective 15 March 1985, the general conduct bar rules apply and the petitions [are] barred."

The Board reversed the Regional Director. It pointed out that the original filing date of a petition, rather than the date of the request for reinstatement, controls for purposes of applying the Board's contract-bar rules where the petition was dismissed subject to reinstatement after blocking charges have been resolved. Here, the Board noted, the petitions were originally filed after the existing contract had expired and well before the new contract was executed. Thus, the Board held, there is no contract bar to reinstating the petitions.

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Borden Inc. (Teamsters Local 492), Albuquerque, N.M. 28 January. 28-CA-8175; JD-(SF)-7-86, Clifford H. Anderson, Adm. Law Judge

Fibreboard Corp., a wholly owned subsidiary of Louisiana-Pacific Corp. (Lumber, Production & Industrial Workers Local 2652 and Individual), Stanford, Calif. 28 January. 32-CA-6848, 32-RD-608; JD-(SF)-6-86, Gerald A. Wacknov, Adm. Law Judge

Alexander Packaging Co. (Teamsters Local 980), Sonoma, Calif. 30 January. 20-CA-19710; JD-(SF)-5-86, David G. Heilbrun, Adm. Law Judge

Otis Elevator Co., a wholly owned subsidiary of United Technologies (Auto Workers Local 989), Mahwah, N.J. 31 January. 22-CA-8507; JD-10-86, Irwin Kaplan, Adm. Law Judge

FMC Corp., Cable Crane and Excavation Division (Auto Workers), Cedar Rapids, Iowa. 6 February. 18-CA-7654, 7971; JD-26-86, William A. Gershuny, Adm. Law Judge

Waggoner Corp. (Teamsters Local 299), Troy, Mich. 7 February. 7-CA-23676; JD-29-86, Robert T. Wallace, Adm. Law Judge

Goren Printing Co., Inc. (Graphic Communications, Boston Local 600), Boston, Mass. 10 February. 1-CA-22446, 22805; JD-27-86, Martin J. Linsky, Adm. Law Judge

Inner-City Broadcasting Corp. (American Federation of Television and Radio Artists, New York Local), New York, N.Y. 10 February. 2-CA-20031, et al.; JD-(NY)-9-86, Raymond P. Green, Adm. Law Judge

Nuclear Fuel Services, Inc. (Oil, Chemical & Atomic Workers Local 3-677), Erwin, Tenn. 10 February. 10-CA-21201; JD-(ATL)-8-86, William N. Cates, Adm. Law Judge

Teamsters Local 703 (Freed Produce Co., Inc.), Chicago, Ill. 11 February. 13-CB-11007, 13-CC-1480; JD-31-86, Michael O. Miller, Adm. Law Judge

Summit Polymers, Inc. (Auto Workers), Kalamazoo, Mich. 11 February. GR-7-CA-24211, 24258; JD-30-86, Bernard Ries, Adm. Law Judge

Burgett & Son Masonry and its alter ego Consumers Energy Savings System, Inc.; and Snyder Masonry (Bricklayers, Metropolitan Detroit District Council), Detroit, Mich. 11 February. 7-CA-23824, 24154; JD-25-86, Harold Bernard, Jr., Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Clark Material Systems Technology Co. (9-RC-14845), Georgetown, Ky. 10 February. Production and maintenance employees shall vote for representation by the Auto Workers, or for no representation.

Kuhns, Inc. (9-RC-14847), Dayton, Ohio. 7 February. Production and maintenance employees shall vote for representation by Iron Workers Local 804, or for no representation.

Whitlock Corp. (13-RC-16816), Des Plaines, Ill. 7 February. Full-time and regular part-time warehouse employees shall vote for representation by Teamsters Local 781, or for no representation.

Transport, Inc. (15-RC-7224), Hattiesburg, Miss. 7 February. Truck drivers and shop employees including the mechanic, mechanic trainee, tire repairman, parts runner/janitor, and washman/tire repairman shall vote for representation by Teamsters Local 891, or for no representation.

DATE _____

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Name and Address _____

_____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2005

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

17 - 21 FEBRUARY 1986 (W-2005)

NEWARK PUBLIC LIBRARY
MAR 19 1986
U. S. GOVT. PUBS.
DEPOSITORY

CASES SUMMARIZED

Elevator Sales and Service, Inc. and Kencor, Inc.	Broomall, Pa.	1
Evergreen Lumber Co., Inc.	Chama, N.M.	6
Gibbons Enclosures, Inc.	City of Industry, Calif.	5
Goodyear Tire and Rubber Company and Rubber Workers Local 831	Danville, Va.	2
G.R. Coach and Chieppo Bus Co.	New Haven, Conn.	1
Hoffman (Harry) & Son Printing	Buffalo, N.Y.	7
Independent Stave Co., Inc.	Lebanon, Mo.	8
McAllister Brothers Inc. and Outreach Marine Corp., Alter Egos	Baltimore, Md.	4
Scientific-Atlanta, Inc.	Norcross, Ga.	1
Sheet Metal Workers Local 208	Springfield, Mo.	3
Smith (Earl C.), Inc.	Toledo, Ohio	7
United Cloth Co., Inc.	Spartanburg, S.C.	5

READEX FICHE best copy available

LR 1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 9

List of Directions of Elections by Regional Directors 10

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Chieppo Bus Company and its alter egos, Comfort Coach and Nicholas Chieppo d/b/a G. R. Coach and Chieppo Bus Company (AO-252; 278 NLRB No. 71) New Haven, Conn. 18 February. The Board dismissed the Employer's petition for an advisory opinion which sought to determine whether the Board would assert jurisdiction over the Employer in consolidated cases 39-CA-1699 and 1798, concerning charges brought by the Amalgamated Transit Union.

The Board stated: "Because there is an outstanding statutory unfair labor practice proceeding in which a binding adjudication of the jurisdictional issue can be obtained and no other considerations suggesting an urgent need for earlier Board determination of the jurisdictional question alone have been brought to the Board's attention, the underlying purpose of the advisory opinion procedures will be better served, and unnecessary duplication and possible confusion will be avoided if the Board follows the practice of confining itself solely to the resolution of the statutory proceeding before it."

(Chairman Dotson and Members Dennis, Johansen and Babson participated.)

* * *

Scientific-Atlanta, Inc. (10-CA-20139; 278 NLRB No. 90) Norcross, Ga. 19 February. The Board agreed with an administrative law judge that the Employer violated the Act when supervisor William Bauer requested that employees not discuss their merit increases, and by demoting Charlotte Stephens from the position of group leader for not complying with Bauer's request.

The judge found that Bauer's request amounted to a rule lacking substantial and legitimate business reasons for its promulgation. The breaching of that rule by Stephens, therefore, could not be made the subject of punishment by the Employer, concluded the judge.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Electrical Workers (IBEW) Local 1609; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Atlanta, 17 May 1985. Adm. Law Judge John M. Dyer's decision issued 1 November.

* * *

Elevator Sales and Service, Inc. and Kencor, Inc. (4-CA-13124, 13151; 278 NLRB No. 94) Broomall, Pa. 19 February. The Board agreed with an administrative law judge's decision that Elevator Sales and the alter ego, Kencor, violated the Act by refusing to recognize and bargain

with Elevator Constructors Local 5 and by refusing to adhere to terms of a 1977-82 agreement between National Elevator Industry, Inc. (NEII) and the International Union of Elevator Constructors, and a 1982-87 successor agreement.

Respondent Elevator, a family-owned business that was a member of the multiemployer group NEII, phased out operations in 1982; these operations then were taken over by Kencor, which honored neither the 1977-82 agreement nor its successor.

The judge termed this changeover from Elevator to Kencor as simply a "paper reorganization of a family business." He found that Kencor is the alter ego of Elevator and that both respondents illegally repudiated the two contracts negotiated by NEII and the Union.

The judge concluded that since Elevator's withdrawal from NEII was not communicated to the International Union or Local 5 before commencement of negotiations for the 1982-87 contract, Elevator---indisputably bound by terms of the 1977-82 contract---was therefore also bound by terms of the successor agreement. Furthermore, Kencor, as Elevator's alter ego, was also obligated to abide by the terms of those agreements, the judge held.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Elevator Constructors Local 5; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Philadelphia, 24 February, 4-7 April and 24 May 1983. Adm. Law Judge Irwin H. Socoloff's decision issued 19 March 1985.

* * *

Goodyear Tire and Rubber Company and Rubber Workers Local 831 (5-CA-16224, 5-CB-4595; 278 NLRB No. 98) Danville, Va. 21 February. The Board affirmed an administrative law judge's conclusion that both Goodyear and Rubber Workers Local 831 violated the Act by maintaining a seniority clause in their contract which accorded the Union's Executive Board members and Treasurer super-seniority for shift preference, surplus and layoffs, and by discriminating against employee Lonnie Campbell through the application of the seniority provision.

The judge applied the Board standard which holds that grants of super-seniority are unlawful except to "those employees responsible for grievance processing and on-the-job contract administration." Gulton Electro-Voice, Inc., 266 NLRB 406. The judge decided that neither the duties of the Union Executive Board members nor those of the Treasurer could be included in that category. Agreeing with the judge, the Board noted that as to the Treasurer, all "duties related to dues checkoff...could be accomplished either by telephone or mail."

As for the discrimination against Campbell, the judge found that the seniority clause was enforced against Campbell by according super-seniority for shift preference to Thomas Hall, a member of the Union's Executive Board. As a result, Campbell was "bumped" from the first shift to the second shift, a change which would not have occurred but for the illegal discrimination due to the fact that Campbell had more seniority than Hall.

Accordingly, the judge ordered, and the Board agreed, that the Employer and Union cease maintaining the unlawful seniority clause in their contract. The judge also ordered the Employer to reinstate Campbell to the first shift, and ordered the Union and the Employer to jointly and severally make Campbell whole for any loss suffered due to the discrimination.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Lonnie L. Campbell, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3) and 8(b)(1)(A) and 8(b)(2). Hearing at Danville, 7 August 1985. Adm. Law Judge James T. Youngblood's decision issued 29 November.

* * *

Sheet Metal Workers Local 208 (17-CB-2354, 2528; 278 NLRB No. 87) Springfield, Mo. 21 February. The Board held that the Union violated the Act by charging and fining eight employees of The Paul Mueller Co. who, after submitting their resignations from membership, crossed a Union picket line and returned to work; by fining an employee in contravention of a valid no-retaliation agreement; and by processing a charge against and trying nonmember Don Watson for certain postresignation conduct.

A union may not lawfully restrict its members' rights to resign, the Board noted. It held that resignations submitted by eight employees became effective on being submitted to the Union, and that the employees thus became nonmembers and not subject to union discipline. By disciplining the eight employees, the Union violated the Act, the Board held.

By signing a no-retaliation clause, the Union waived any right it might have had to discipline an employee about strike-related activity, the Board said. The Union's action in charging, trying, and fining Bill Nicolson contravened the no-retaliation agreement and violated the Act, the Board held.

The Union further violated the Act, it was found, by holding a trial on charges that Don Watson violated the union constitution and slandered a union member. Watson had resigned from the union, the Board said.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Paul Mueller Co. and Don E. Watson, an Individual; complaint alleged violation of the Act's Section 8(b)(1)(A). Hearing in case 17-CB-2354 at Springfield, 24-27 August 1981; Adm. Law Judge Joan Wieder's decision issued 18 February 1982. Parties waived hearing in case 17-CB-2528.

* * *

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos (5-CA-16495; 278 NLRB No. 91) Baltimore, Md. 18 February. The Board affirmed an administrative law judge's finding that the two companies which provide tugboat services in the Baltimore harbor are alter egos and a single employer. The judge further concluded, and the Board agreed, that the Respondents violated the Act by failing to abide by the terms and conditions of employment established by the collective-bargaining agreements between McAllister and Seafarers Atlantic, Gulf, Lakes and Inland Waters Division.

The judge found that McAllister sold its boats and transferred its Baltimore Harbor operation to Outreach in order to evade its collective-bargaining obligations.

Since he found that McAllister and Outreach were alter egos and a single employer, the judge further concluded that Outreach was bound by McAllister's union contracts and that the Employer violated the Act by withdrawing recognition from the unit as representative of two units of employees, by repudiating and failing to adhere to the union contracts, by unilaterally changing wages and other terms and conditions of employment, and by bypassing the Union and dealing directly with employees concerning wages and other terms and conditions of employment.

McAllister also violated the Act, the judge found, by discharging its bargaining unit employees in order to avoid its bargaining obligations. Both Respondents unlawfully refused to rehire employees as positions became available, it was held.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Seafarers Atlantic, Gulf, Lakes and Inland Waters District; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Baltimore, Md. on dates in November 1984. Adm. Law Judge Marvin Roth's decision issued 22 April 1985.

* * *

United Cloth Company, Inc. (11-CA-11680; 278 NLRB No. 88) Spartanburg, S.C. 18 Feburary. The Board agreed with an administrative law judge's findings that the Employer unlawfully questioned employees concerning their sympathies for the Clothing and Textile Workers, solicited grievances from employees, and threatened employees with job loss and plant closure--all in order to discourage employee support for the Union.

On another matter, the judge found that the Employer did not violate the Act by discharging Calvin Allen. The General Counsel had alleged that the active union supporter was unlawfully discharged because of union considerations; the judge concluded, however, that the Employer rebutted the General Counsel's prima facie case by showing that Allen would have been discharged without regard to his union activity, for leaving his work station without permission.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Clothing and Textile Workers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Spartanburg, 29 August 1985. Adm. Law Judge Hutton S. Brandon's decision issued 28 October 1985.

* * *

Myers Custom Products Incorporated, A Wholly Owned Subsidiary of Myers Electric Products, Inc. d/b/a Gibbons Enclosures, Inc. (21-CA-23466; 278 NLRB No. 92) City of Industry, Calif. 20 February. The Board dismissed allegations that a 12 November 1984 Employer refusal to bargain with Electrical Workers (IBEW) Local 1710 was unlawful.

The issue was whether the Employer was a successor employer obligated to recognize and bargain with the Union.

On 14 September 1984, the Employer purchased the operations of Gibbons Enclosures, Inc., which had been party to a series of collective bargaining agreements with the Union, and hired 13 individuals to fill bargaining unit positions, including 9 who had worked for Gibbons. By 12 November the Employer expanded its workforce to 25 employees, of whom only 9 had been employed by Gibbons.

The Employer argued that because it expected an increase in its employee complement within approximately two months of commencing operations, a majority status determination should be delayed until 12 November when it had hired 25 unit employees. Because a majority of its employees on that date had not worked for Gibbons, the Employer contended that it had no obligation to recognize the Union.

The Board agreed. It stated, "[w]hen a new employer expects, with reasonable certainty, to increase its employee complement substantially within a relatively short time, it is appropriate to delay determining the bargaining obligation for that short period."

(Members Dennis, Babson and Stephens participated.)

Charges filed by Electrical Workers (IBEW) Local 1710; complaint alleged violation of the Act's Section 8(a)(1) and (5). Parties waived hearing before an administrative law judge.

* * *

Evergreen Lumber Company, Inc. (28-CA-6598(E); 278 NLRB No. 99)
Chama, N.M. 21 February. The Board affirmed an administrative law judge's decision that the General Counsel's position was not substantially justified in an unfair labor practice proceeding alleging that the Employer unlawfully refused to recognize and bargain with the Southwestern Council of Industrial Workers. It accordingly held that the company was entitled to an award of $13,489.41 for attorney's fees and expenses, plus an additional amount for fees and expenses incurred in the preparation and prosecution of the application for an award under the Equal Access to Justice Act.

The complaint in the unfair labor practice proceeding alleged that the Employer was a successor to Western Pine Industries and that, as a successor employer, the company unlawfully refused to recognize the Union. In this supplemental proceeding, the judge noted that the General Counsel in prosecuting the unfair labor practice complaint relied on the theory that an employer is a successor for collective-bargaining purposes so long as its complement of unit employees is made up of a majority of the predecessor employer's unit employees, regardless of whether they were members of the bargaining unit at the time the predecessor employer ceased business. In support of this theory, the judge said, the General Counsel cited no Board authority or legal precedent. The General Counsel's theory did not have a reasonable basis in law, the judge found; nor, he added, did it have a reasonable basis in fact.

The judge rejected the Employer application for fees and expenses incurred in connection with the preparation and prosecution of the EAJA application. The Board noted that since the judge issued his supplemental decision, the Board has ruled that such expenses are recoverable.

(Chairman Dotson and Members Dennis and Johansen participated.)

Adm. Law Judge Jerrold H. Shapiro's supplemental decision issued 19 May 1983.

* * *

Earl C. Smith, Inc. (8-CA-16037; 278 NLRB No. 100) Toledo, Ohio. 21 February. The Board found that a grievance decision of the Ohio Joint State Committee ordering the Employer to comply with a successor contract not at issue or in effect at the time of the Employer's alleged unlawful conduct was "palpably wrong" and "clearly repugnant" to the Act, and thus deferral to the decision of the Committee was inappropriate.

Noting that the Employer admittedly engaged in unilateral modifications of its collective-bargaining agreement with Teamsters Local 20, direct dealing with employees, and failure to bargain with the Union, the Board agreed with an administrative law judge that this conduct violated the Act.

"Under no interpretation consistent with the Act could the Committee have resolved these violations of Section 8(a)(5) merely by ordering compliance with a successor contract," the Board remarked.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 20; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Toledo, 29 May 1984. Adm. Law Judge Thomas A. Ricci's decision issued 24 August 1984.

* * *

Harry Hoffman & Son Printing (3-CA-12271; 278 NLRB No. 101) Buffalo, N.Y. 21 February. The Board agreed with an administrative law judge that the Employer violated the Act by discharging Kenneth Gliss for picket line misconduct which the Employer had condoned.

The judge found that although the Employer could have discharged Gliss for throwing a tomato at a moving vehicle driven by a person crossing the picket line to work at the Employer's facility, the Employer condoned Gliss' action by these acts: sending him letters advising him of his rights as an employee to remain a member of Graphic Communications Local 261 or to resign, and advising that he was on a preferential hiring list subsequent to the Union's unconditional offer to return to work; calling to inquire if he was still available for work and wished to remain on the preferential recall list; delaying the discharge until 5½ months after the misconduct; failing to advise the Union that Gliss would not be recalled; and stating that all employees would remain on the preferential recall list unless they had secured substantially equivalent employment elsewhere or resigned with no mention made of picket line misconduct.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Graphic Communications Local 261; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Buffalo, 4 April 1985. Adm. Law Judge Martin J. Linsky's decision issued 28 June.

* * *

Independent Stave Company, Inc. (17-CA-12350, 12419; 278 NLRB No. 89) Lebanon, Mo. 18 February. The Board agreed with an administrative law judge that the Employer violated the Act by refusing to award a deer rifle to Coopers Local 42 president David Dame, pursuant to a contractually-established contest among employees, because the union had filed charges under the Act over the same topics Dame had previously filed grievances about.

The judge rejected the Employer's contention that the contest provision of the contract violated Section 302 of the Act, which Congress passed in an attempt to stop bribes of union officials. The judge noted that the deer rifle was encompassed within the exception set forth in Section 302(c)(1) for payments made as compensation for, or by reason of, Dame's services as an employee of the Employer.

The judge found that the Employer also violated the Act by threatening Dame with plant closure if the Union attempted to make the barrelhead dowel pin-making job into a unit position; and by threatening Dame with discharge and unspecified reprisals if he did not withdraw charges filed under the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Coopers Local 42; complaint alleged violation of the Act's Section 8(a)(1) and (4). Hearing at Lebanon, 21 May 1985. Adm. Law Judge David L. Evans' decision issued 24 September.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Hotel and Restaurant Employees Local 226 (Desert Palace, Inc., d/b/a Caesars Palace, et al.) (Nevada Resort Association), Las Vegas, Nev. 6 February. 31-CB-5993; JD-(SF)-9-86, Burton Litvack, Adm. Law Judge

Kenai Drilling West Coast, Inc. (Individual), Orcutt, Calif. 7 February. 31-CA-15248; JD-(SF)-11-86, James S. Jenson, Adm. Law Judge

Meyer's Cafe & Konditorei, a wholly owned subsidiary of Fred Meyer, Inc. (Food and Commercial Workers Local 44) Bellingham, Wash. 10 February. 19-CA-17126, 17283; JD-(SF)-10-86, James S. Jenson, Adm. Law Judge

Salinas Newspapers, Inc., a division of Gannett Newspapers (San Jose Newspaper Guild Local 98), Salinas, Calif. 11 February. 32-CA-6987; JD-(SF)-13-86, George Christensen, Adm. Law Judge

Gloversville Embossing Corp. (Clothing and Textile Workers, Glove Cities Area Joint Board), Gloversville, N.Y. 13 February. 3-CA-12448, 3-RC-8618; JD-(NY)-11-86, Joel P. Biblowitz, Adm. Law Judge

Aquaslide 'N' Dive Corp. (Maritime Union, Industrial, Technical and Professional Employees Division), Brownsville, Tex. 13 February. 23-CA-9934, 9971; JD-(ATL)-10-86, J. Pargen Robertson, Adm. Law Judge

Rappazzo Electric Co., Inc. (Electrical Workers (IBEW) Locals 724 and 438), Albany, N.Y. 13 February. 3-CA-11871, 11909; JD-(NY)-12-86, Jesse Kleiman, Adm. Law Judge

Shrewsbury Motors, Inc. (Amalgamated Local 355), Shrewsbury, N.J. 14 February. 22-CA-13424(E); JD-32-86, David S. Davidson, Adm. Law Judge

Stor-Rite Metal Products, Inc. (Individual), Mighigan City, Ind. 18 February. 25-CA-17234; JD-34-86, William F. Jacobs, Adm. Law Judge

Delta Gas Inc., a subsidiary of Louisiana Energy & Development Corp. (Individual), New Orleans, La. 19 February. 15-CA-9709; JD-(ATL)-7-86, Richard J. Linton, Adm. Law Judge

Granit Hotel and Country Club (Hotel and Restaurant Employees Local 76), Kerhonkson, N.Y. 19 February. 3-CA-11829; JD-(NY)-10-86, Julius Cohn, Adm. Law Judge

U.S. Postal Service (Individual), Joplin, Mo. 19 February. 17-CA-1245(P); JD-40-86, Steven M. Charno, Adm. Law Judge

Minnesota Boxed Meat (Teamsters Local 544), Hopkins, Minn. 20 February. 18-CA-9263, et al., 18-RC-13796; JD-35-86, Phil W. Saunders, Adm. Law Judge

Collins Industries, Inc. (Machinists District 70), Hutchinson, Kans. 20 February. 17-CA-12591, 17-RC-9704; JD-33-86, James L. Rose, Adm. Law Judge

Polly Drummond Thriftway, Inc., and Value Line Foods of Delaware, Inc. t/a Z Mart Thriftway (Food and Commercial Workers Local 27), Philadelphia, Pa. 20 February. 4-CA-15023; JD-28-86, Richard H. Beddow, Jr., Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Dale Industries, Inc., Marshall Mfg. Co. (7-RC-17919), Detroit and Dearborn, Mich. 14 February. Production and maintenance employees including receiving employees and truck drivers shall vote for representation by Service Employees Local 79; by Industrial Workers Local 399; or by neither.

Lafayette Christian Nursing Center, Inc., Jefferson Christian Nursing Center, Inc., and Christian Nursing Center, Inc. (GR-7-RC-17893, 17894), Grand Rapids, Mich. 12 February. Full-time and regular part-time nursing aides, housekeeping employees, maintenance employees, dietary employees, cooks, cooks helpers, kitchen helpers, laundry employees, ward clerks, and orderlies shall vote for representation by Service Employees Local 79, or for no representation.

Bryant Beverages, Inc. (26-RC-6826), Forrest City, Ark. 18 February. Distribution, sales and maintenance employees including route salesmen, vendor mechanics, truck mechanics, janitors, route trainer, route trainees, merchandisers and warehouse employees shall vote for representation by the Electrical Workers (IUE), or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2006

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

(W-2006)

24 - 28 FEBRUARY 1986

NEWARK PUBLIC LIBRARY

MAR 21 1986

U. S. GOVT. PUBS.
DEPOSITORY 375

CASES SUMMARIZED

American Geri-Care, Inc.	Brooklyn, N.Y.	
American Postal Workers, Nation's Capital Area Local (U.S. Postal Service)	Washington, D.C.	5
Brown Co.; Brown Co., Livingston-Graham Div.; Brown Co., Tri-City Concrete Div.; L-T Transport, Inc.	El Monte, Vernon and Redlands, Calif.	13
DeSoto, Inc.	Pennsauken, N.J.	15
Dresser Industries, Inc.	Stratford, Conn.	10
Fox-Art Theatres, Inc.	Narbeth, Pa.	9
Ground Round	Walpole, Mass.	3
Histacount Corp., A Subsidiary of S.C.M. Corp.	Melville, N.Y.	11
Hotel and Restaurant Employees Local 64 (HLJ Management Group)	Knob Noster, Mo.	7
Intersystems Design and Technology Corp.	Pascagoula, Miss.	14

LR 1.15/2:

KBMS, Inc., a subsidiary of Century Broadcasting Corp.	Los Angeles, Calif.	8
Lectromelt Casting and Machinery Co., et al.	Barberton, Ohio	10
Mountain Tire Co.	Latrobe, Pa.	4
North Vernon Forge, Inc.	Seymour, Ind.	1
Olympia Fields Osteopathic Medical Center	Olympia Fields, Ill.	14
Pacific Mutual Door Co.	Roseville, Minn.	17
Paintsville Hospital Co., Inc.	Paintsville, Ky.	12
Ramada Beverly Hills	Beverly Hills, Calif.	5
Rosewood Mfg. Co., Inc.	Memphis, Tenn.	6
Ryder/P.I.E. Nationwide, Inc.	New Orleans, La.	3
SDC Investment, Inc.	Dixon, Calif.	16
Stone's Express, Inc.	Honolulu, Hawaii	1
Unibilt Industries, Inc.	Vandalia, Ohio	8

OTHER CONTENTS

List of Decisions of Administrative Law Judges 19

List of Directions of Elections by Regional Directors 20

Notice of Publication: 1982 NLRB Annual Report

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

North Vernon Forge, Inc. (25-CA-16370; 278 NLRB No. 106) Seymour, Ind. 25 February. The Board agreed with an administrative law judge's finding that the Employer violated the Act by discharging Robert Roberts because he engaged in protected concerted activity of complaining to Metal Polishers Local 15 and attempting to invoke bumping rights under the collective bargaining agreement.

Roberts attempted to bump a junior employee from his position as a trim press operator despite the fact that, as a probationary employee, Roberts had no such right under the contract. The judge found that Roberts' supervisor "became irritated with Roberts for trying to assert rights he did not have," and eventually fired Roberts. The judge, however, held that because the language of the agreement was ambiguous, it was "reasonable for Roberts to believe he had bumping rights. His efforts to enforce those rights by complaining to the Union and his supervisor are therefore protected."

Agreeing with the judge that the Employer engaged in another violation by informing its employees that Roberts was discharged for these actions, the Board noted that the judge's conclusion was supported by a statement made by Supervisor Glen Waldon to Roberts and the Union Steward during Roberts' discharge conference. Waldron, in providing Roberts with the reasons for his termination, cited Roberts' complaints about his job assignments, including complaints to the Union.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Robert Roberts, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Seymour, 30 April 1985. Adm. Law Judge Steven M. Charno's decision issued 13 November.

* * *

Stone's Express, Inc. (37-CA-2365; 278 NLRB No. 93) Honolulu, Hawaii. 24 February. On motion for summary judgment, the Board held that the Employer violated the Act by refusing since 23 July 1985 to bargain with Hotel & Restaurant Employees Local 5, and by refusing to provide relevant information to the Union as it requested.

Following an election held 17 July 1985 the Union was certified as the exclusive bargaining representative of all the Employer's drivers, helpers and dispatcher trainees. In granting summary judgment, the Board agreed with the General Counsel that all material issues could have been raised at the prior representation hearing; that the Employer did not offer any newly discovered or previously unavailable evidence; and that, therefore, the Employer had not raised any issue that was properly litigable.

(Chairman Dotson and and Members Dennis and Stephens participated.)

Charges filed by Hotel & Restaurant Employees Local 5; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 18 November 1985.

* * *

American Geri-Care, Inc. (29-CA-11195, 11476; 278 NLRB No. 96) Brooklyn, N.Y. 24 February. The Board affirmed an administrative law judge's dismissal of the complaint alleging that the Employer violated the Act by refusing to bargain with Health Professionals, ILA Local 6; by granting unit employees merit increases contrary to its agreement with the Union; and by promising employees benefits, threatening to withhold wage increases and making other reprisals in order to induce employees to refrain from supporting the Union.

In the judge's opinion, "An aura of fantasy seem[ed] to envelop the evidence proffered by the Union's officials." The judge cited numerous factors to support his opinion, including the fact that the Union business agent's testimony that the Employer told him "to go to hell" when he requested it to bargain was so "indifferent" that it appeared the agent himself did not believe it; the Union waited for more than a year following its bargaining request before it filed charges; the Union's contradictory statements about its desire for interest arbitration; and the fact that the judge sensed no antagonism between the officials of the Union and the Employer, while at the same time the Union president "made no secret of his anger" at the General Counsel's refusal to allege that another labor organization had received unlawful assistance.

The judge indicated that the processing of a decertification petition filed by Service Employees Local 144 (Case 29-RC-5885), had been blocked because of this case. In light of this, the judge expressed his "suspicion...that the Board's processes may have been badly misused," such that the proceedings may have been "initiated only to accomplish...the blocking of the pending representation cases."

However, while the judge refrained from making a specific finding as to the Union's underlying motivation, he nevertheless found that the General Counsel had not adduced probative evidence sufficiently persuasive to support the complaint allegations, and dismissed the complaint.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Health Professionals, ILA Local 6; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at New York City, May-June 1985. Adm. Law Judge James F. Morton's decision issued 28 October.

* * *

Howard Johnson Company d/b/a Ground Round (1-CA-22807; 278 NLRB No. 108) Walpole, Mass. 26 February. The Board agreed with the decision of an administrative law judge that the Employer violated the Act by issuing a written reprimand to food server William Burnand on 26 January 1985, by discharging Burnand on 8 February 1985, by denying Burnand a finder's fee for referring a new employee to the facility, and by barring Burnand from its premises, all because Burnand had engaged in protected concerted activity.

The Employer actions against Burnand were taken after he and other employees met with their supervisor to protest the Employer's proposed changes in hours and duties, which included a cut back and the requirement that food servers remain after their shift to do maintenance work and wash dishes.

The judge rejected as pretextual "the belated, shifting and unsubstantiated" reasons cited by the Employer to justify its actions. He noted that the Employer had accepted Burnand's performance for months, and concluded that the Employer's actions were in retaliation for Burnand's protected concerted activities, writing: "It was not until Burnand, and his co-workers, persisted in complaining about their wages, hours and other terms and conditions of employment, that Management wrote him up, fired him, denied him a finder's fee, and 'barred him from the premises for life.'"

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by William J. Burnand, an Individual; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Boston, 10-11 July 1985. Adm. Law Judge Frank H. Itkin's decision issued 13 November.

* * *

Ryder/P.I.E. Nationwide, Inc. (15-CA-9415; 278 NLRB No. 109) New Orleans, La. 25 February. The Board agreed with an administrative law judge's finding that the Employer violated the Act by discharging truckdriver Clarence Pate and by advising employee Kenneth Jordan that Pate was discharged for his grievance filing activity.

Applying the Board's Wright Line analysis, the judge found that although Pate was involved in wrongful conduct which gave the Employer reasonable grounds to suspect that Pate falsified his trip card, the Employer nevertheless failed to meet its burden of proving that Pate would have been terminated even in the absence of his protected concerted activity.

The judge found that the General Counsel had established a prima facie case that Pate was discharged for discriminatory reasons, based on evidence that Pate was at least one of the most persistent and successful grievants in Ryder's New Orleans work force, that the Employer's supervisory personnel were aware of and opposed to such activity, and that Pate was treated more harshly than other employees for conduct not vastly different in nature. The judge noted that the Employer had never before discharged an employee for conduct such as Pate's.

As to the finding that the Employer unlawfully threatened and warned employee Kenneth Jordan about grievance filings, the judge credited testimony that when Jordan asked the Employer's terminal manager about what happened to Pate, the manager replied, "his grievances got him." The judge held this "clearly" violated the Act and also "discloses the Respondent's unlawful motivation."

(Members Dennis, Babson and Stephens participated.)

Charges filed by Clarence Eugene Pate, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at New Orleans, 23-24 April 1985. Adm. Law Judge Arline Pacht's decision issued 16 August.

* * *

Mountain Tire Co. (6-CA-18562; 278 NLRB No. 105) Latrobe, Pa. 24 February. On motion for summary judgment, the Board held that the Employer violated the Act by refusing to bargain with the Auto Workers since 18 October 1985.

Following an election held 10 October 1985, the Union was certified as the exclusive bargaining representative of all production and maintenance employees at the Employer's Latrobe facility. The Board agreed with the General Counsel that all material issues were or could have been litigated in the prior representation proceeding, that the Employer did not offer any newly discovered or previously unavailable evidence, and that therefore the Employer had not raised any issue that was properly litigable.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Auto Workers; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 9 December 1985.

* * *

Ramada Inns, Inc. d/b/a Ramada Beverly Hills (31-RC-5631, 5650; 278 NLRB No. 95) Beverly Hills, Calif. 25 February. The Board ruled that the only appropriate unit was an overall unit composed of the hotel's employees. It accordingly vacated a 26 April 1984 election held in a hotel services unit and in a food and beverage unit, and directed that a second election be conducted in the overall unit to determine employees' desire for representation by Hotel and Restaurant Employees Local 11.

In directing an election in two units, the Regional Director relied on a 1981 decision and direction of election in which the Regional Director found three units appropriate. The three units were the two petitioned for in the instant case, along with a front desk unit.

Contrary to the Regional Director, the Board found that the Employer's operation was substantially more centralized in its administration, particularly in personnel and labor relations matters, than it was in 1981. It held that the Regional Director erred in finding that the operation "essentially remained unchanged" since 1981.

Noting "the extensive functional integration and confluence of employee concerns," the Board found appropriate an overall unit.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

American Postal Workers, Nation's Capital Area Local (U.S. Postal Service) (5-CB-4930(P); 278 NLRB No. 110) Washington, D.C. 27 February. Contrary to an administrative law judge, the Board dismissed an allegation that the Union removed Veola Jackson from her position as union steward because she had stated an intent to file an unfair labor practice charge against the Union. The complaint had alleged that the Union's action in removing Jackson was unlawfully motivated by her protected activity.

The judge in finding a violation of the Act drew an inference that during a certain telephone conversation union president Carl Robinson acquired knowledge of Jackson's intent to file a charge. He thus concluded that the Union removed Jackson from her steward position because of that stated intent.

The Board, however, concluded that what it termed the "extremely limited evidence" of the events leading to Jackson's removal would not support an inference that Jackson informed Robinson during the telephone conversation of her intent to file a charge. The Board further said that, under the circumstances presented, it

was unwilling to infer that at the time of Jackson's removal the Union was aware of her decision to file a charge. It accordingly concluded that the General Counsel failed to establish that protected activity was a motivating factor in the decision to remove Jackson.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Veola Jackson, an Individual; complaint alleged violation of the Act's Section 8(b)(1)(A). Hearing at Washington, 12-13 June 1985. Adm. Law Judge Thomas E. Bracken's decision issued 30 September 1985.

* * *

Rosewood Mfg. Co., Inc. (26-RC-6469; 278 NLRB No. 103) Memphis, Tenn. 26 February. Chairman Dotson and Member Johansen overruled an election objection alleging that the Employer improperly used, defaced, and posted on its bulletin board official National Labor Relations Board election documents. Member Dennis, dissenting, would hold that the Employer's use of a defaced notice of election was objectionable conduct.

The alteration of the notice consisted of the caption "Vote No" handwritten over the top half of the notice with an arrow drawn to the "No" portion of the sample ballot.

Chairman Dotson and Member Johansen relied on SDC Investments, Inc., 274 NLRB No. 78 (1985), in which the Board held that "the crucial question should be whether the altered ballot in issue is likely to have given the misleading impression that the Board favored one of the parties to the election. When it is evident that the altered ballot is the work of a party, rather than the Board, employees are perfectly capable of judging its persuasive value."

Here, the Board panel majority found, the handwritten message "Vote No" scrawled across the notice as well as the drawn arrow was clearly discernible as an addition made by the Employer and sufficiently distinct from the printed notice and sample ballot to preclude the suggestion that the Board was endorsing the Employer. They further noted that the altered notice was for an election held over nine months previously. Accordingly, Chairman Dotson and Member Johansen held that the Employer's use of the notice was unlikely to mislead employees, and they overruled the objection.

Member Dennis would find no meaningful distinction between this case and Silco, Inc., 231 NLRB 110 (1977). In Silco, which involved facsimile ballots with the words "Vote No on July 21" and an arrow drawn to the "no" box, the Board observed that the document did not show the Employer was responsible and reasoned that the facsimile

tended to suggest that the material appearing on the replica bore the Board's approval. Relying on Silco, Member Dennis would sustain the objection.

The Board panel majority certified that the Clothing and Textile Workers did not receive a majority of the valid ballots cast.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

Hotel and Restaurant Employees Local 64 (HLJ Management Group) (17-CB-2971; 278 NLRB No. 112) Knob Noster, Mo. 28 February. The Board agreed with the decision of an administrative law judge and dismissed the General Counsel's complaint which alleged the Union breached its duty of fair representation by failing to properly investigate Elsie Sage's grievance, and by eventually deciding not to take the grievance to arbitration. Sage was discharged by HLJ Management for allegedly failing to disclose a medical condition in her employment application.

The Board agreed with the judge's finding that the Union investigation was adequate. The judge found that the Union steward had, among other things, frequently met with Sage, reviewed Sage's file, visited Sage's home, supplied Sage with the correct forms and eventually attended the grievance meeting.

In addition, like the judge, the Board found the Union's decision not to take the grievance to arbitration was not in violation of its duty of fair representation. The Board disagreed with the General Counsel's exception that Teamsters Local 705 (Associated Transport), 209 NLRB 292 (1974) required finding a violation for the Union's alleged failure to advocate the interests of Sage at the grievance meeting. The Board stated that since Associated Transport it has indicated that "a Union's representative's duties in the early prearbitral stages of a grievance, as in the prearbitral grievance meeting here, are not the same as...the duty of a Union to be an advocate once in an arbitration, as in Associated Transport."

The Board noted that although the steward told Sage that she needed to produce witnesses at the grievance meeting to substantiate her contested version of the events, Sage failed to provide the requisite substantiation at the meeting. The Board stated: "In these circumstances...business agent Silvio acted within the Respondent's considerable grievance-handling discretion when, having heard both sides of the grievance, he then openly agreed with the Employer about the merits of Sage's grievance and said that the Respondent would not proceed to arbitration."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Elsie Sage, an Individual; complaint alleged violation of the Act's Section 8(b)(1)(A). Hearing at Kansas City, 13-14 December 1984. Adm. Law Judge Donald R. Holley's decision issued 31 May 1985.

* * *

KBMS, Inc., a subsidiary of Century Broadcasting Corporation (31-CA-11441; 278 NLRB No. 118) Los Angeles, Calif. 28 February. The Board agreed with an administrative law judge's finding that the Employer violated the Act by withdrawing its recognition of Television and Radio Artists, Los Angeles Local, as the exclusive bargaining representative of the Employers announcers, newscasters and performers and by refusing to bargain since 1 August 1981; and by unilaterally ceasing payments into the Union's pension and welfare trust funds upon the expiration of the parties' 1980-81 contract.

The judge rejected the Employer's defense that these actions were justified because the Union was not fairly representing the interests of the unit employees. The judge held that the right to be free of ineptness, ineffectiveness or unfairness in one's collective-bargaining representative are rights which inure to the employees and can be redressed by them through either intra-union, Board or other legal procedures. These rights are not, however, available to an employer as a defense in a refusal to bargain case before the Board, the judge noted.

The judge also found, and the Board agreed, that the Employer violated the Act by threatening to discharge an employee if she persisted in her support of the Union and by promising to attempt to secure for her reimbursement for the initiation fees paid by her to the Union.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Television and Radio Artists, Los Angeles Local; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Los Angeles, on various dates in January, March and April 1982. Adm. Law Judge Earldean V.S. Robbins decision issued 20 September 1982.

* * *

Unibilt Industries, Inc. (9-RC-14724; 278 NLRB No. 117) Vandalia, Ohio. 28 February. The Board certified the Miami Valley Carpenters District Council of Dayton, Ohio, affiliated with the Carpenters, as the exclusive bargaining representative of all full-time production and maintenance employees, including truck drivers, at the Employer's 4671 Poplar Creek facility.

The election was held on 18 July 1985, and resulted in 20 votes for and 19 against the Employer, with no challenged ballots.

The Board decided not to adopt the Regional Director's recommendation to set aside the election because a foreign language ballot was not provided for a voter. The Regional Director's investigation revealed that a Vietnamese worker, employed for 7 years, was not fluent in English and was not afforded an opportunity to learn the purpose of and to obtain information concerning the election, and that no foreign language ballot had been prepared for him which would have allowed him to cast his ballot intelligently if he had chosen to vote.

The Board disagreed, stating: "Having employed the worker for 7 years, the Employer was in the best position to know of the need for foreign language materials. The Employer's failure to advise the Board of the need cannot constitute grounds for a new election."

(Members Dennis, Johansen and Babson participated.)

* * *

Fox-Art Theatres, Inc. (4-CA-14631, 14735; 278 NLRB No. 115) Narbeth, Pa. 28 February. The Board affirmed the decision of an administrative law judge that the Employer violated the Act by failing to sign an agreed-upon collective-bargaining agreement with Theatrical Stage Employees Local 307; by unilaterally changing terms and conditions of employment; by denying the Union's request for financial data; and by unlawfully discharging a member of the Union.

The judge found that the Employer proposed, on 18 April 1984, to grant a 28-cent increase in wages (to 7.46 per hour) retroactive to 1 January 1984. Although the Union ratified the contract in May 1984, the Employer rejected the agreement in September 1984, citing changed economic conditions to justify its request for a decrease in wages to 4.50 per hour. The judge concluded that in refusing to sign a written contract embodying the agreement reached on 18 April 1984, the Employer violated its duty to bargain in good faith.

The judge also held that the Employer violated the Act by not allowing the Union access to financial records so that it could verify the Employer's financial condition. In this regard, he cited the Employer's "blanket refusal to provide any information to the Union relevant to its claim of economic hardship." The judge further held that the Employer was not bargaining in good faith when it responded to the Union's offer to reduce its wage demands by a dollar per year by offering to raise its proposal by only a nickel. The judge characterized this as a "patently flippant response to the Union's attempt to narrow differences in the key area of hourly wages."

In addition, the judge found that Irwin Kramner was discharged because he was a Union member. Kramner had had a good work record for 12 years and was considered a "great operator" by his manager. The judge concluded the Employer was affirmatively shown to have ordered Kramner's termination regardless of fault on his part solely because he was a Union member.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Stage Employees Local 307; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Philadelphia 19-20 February 1985. Adm. Law Judge Robert T. Wallace's decision issued 18 June.

* * *

Dresser Industries, Inc. (39-CA-2044; 278 NLRB No. 116) Stratford, Conn. 28 February. The Board agreed with an administrative law judge's conclusion that the Employer violated the Act by prohibiting the posting of dissident Union literature on its bulletin boards.

While Teamsters Local 145 is currently party to a collective bargaining agreement with the Employer, the judge found that a number of the employees were members of the Teamsters for a Democratic Union, an intraunion dissent group of the Teamsters. The judge held that because the Employer permitted numerous forms of notices, of a personal and commercial nature on its many bulletin boards throughout the plant, it could not prohibit the posting of dissident Union literature.

The Board did, however, agree with the Employer that the judge's recommended order was too broad. The Board noted that as proposed the order would prevent the Employer from placing legitimate, nondiscriminatory restrictions on the use of its bulletin boards. The Board therefore modified the order "to clarify that we are proscribing a discriminatory refusal to allow employees to post intraunion political literature on the Respondent's bulletin board and timeclock surfaces."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Abel Ferreira, an Individual; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Hartford, 4 June 1984. Adm. Law Judge Joel P. Biblowitz' decision issued 19 November 1984.

* * *

Lectromelt Casting and Machinery Company, a Div. of Akron Standard Division, Eagle Picher Industries, Inc.; and Lectromelt Casting Div., Ravenna Industries, Inc., a wholly-owned subsidiary of the A.C. Williams Company (8-CA-13000, 13431; 278 NLRB No. 102) Barberton, Ohio. 25 February. The Board agreed with an administrative law judge that the Employer

violated the Act by discriminatorily discharging Molders Local 754 committeemen Eddie May and Donnal May for their alleged participation in a wildcat strike. Contrary to the judge, the Board also found that the Employer unlawfully discharged union committeeman Helis Palmer for his role in the strike, which began over Palmer's suspension from his job.

The Board found that Palmer was disciplined more severely than similarly situated rank-and-file employees because of his position on the Union's Negotiating/Grievance Committee. It could not find, as did the judge, that Palmer's mere presence on the picket line and triggering role that his suspension played in the strike constituted proof that he was actually a strike leader. Because the Board found that the Employer did not discharge Palmer for strike leadership activities, but had singled him out on the basis of his union position, it held that the discharge violated the Act.

For similar reasons, the Board agreed with the judge that the Employer violated the Act by discriminatorily discharging two other union committeemen for their alleged participation in the wildcat strike. It noted that the Employer failed to show that it would have taken the same action against the Mays absent their positions on the Negotiating/Grievance Committee.

(Members Johansen, Babson and Stephens participated.)

Adm. Law Judge Lowell Goerlich's supplemental decision issued 5 June 1984.

* * *

Histacount Corp., A Subsidiary of S.C.M. Corporation (29-CA-7576; 278 NLRB No. 104) Melville, N.Y. 24 February. The Board adopted an administrative law judge's dismissal of an allegation that the Employer unlawfully refused to offer reinstatement to economic strikers when they offered to return to work on September 17, 1979.

The Employer contended that when the strikers offered to return to work, their offer was conditioned on the immediate reinstatement of all the strikers. It further argued that even if it was found that an unconditional offer to return to work was made, it did offer reinstatement as soon as positions became available.

On the basis of credited testimony, the judge found that the strikers went to the company seeking reinstatement as a group, expressing the condition that they would only return to work if they all were reinstated together. He thus held that an unconditional offer to return to work was not made and that the company therefore was under no obligation to recall the strikers.

Also dismissed were allegations that the Employer unlawfully warned employees of the futility of obtaining representation by Teamsters Local 806 and threatened loss of benefits if employees became Union members.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 806; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing on various dates in January, February and May 1981. Adm. Law Judge Raymond P. Green's decision issued 30 October 1981.

* * *

Paintsville Hospital Company, Inc. (9-CA-19802, 9-RC-14304; 278 NLRB No. 108) Paintsville, Ky. 26 February. The Board agreed with an administrative law judge that the hospital operator violated the Act by discharging four employees and laying off a fifth employee in retaliation for union sympathy and in order to discourage activity for the Steelworkers. Chairman Dotson and Member Johansen reversed other of the judge's findings of violation; Member Dennis dissented from what she termed her colleagues' "wholesale reversal of all the independent 8(a)(1) allegations the judge found."

The judge had found that questions and statements by two supervisors sympathetic with the Union nevertheless constituted unlawful threats and interrogation. Chairman Dotson and Member Johansen held, however, that under the circumstances--where the two supervisors actually supported the Union and not the Employer and the employees knew of the support--the union-related inquiries to employees did not violate the Act. Furthermore, as for warnings by the supervisors to employees that they should remove union buttons and that they would be discharged if the Employer found out they supported the union, the Board panel majority held that the supervisors' "unquestioned goal was to assist and protect the employees from management, not to coerce them." The panel majority therefore reversed the judge's findings.

Member Dennis would find that the two supervisors' proffered union sympathies were not sufficient "to justify deviation from the bright-line principle that an employer is responsible for a supervisor's conduct vis-a-vis its employees, whether or not that conduct was authorized and even where it may have been specifically prohibited."

Contrary to the judge, Chairman Dotson and Member Johansen dismissed other allegations of unlawful interrogation and coercive statements.

The Board certified that the Steelworkers won a representation election held 18 August 1983 in a unit of the hospital's employees.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by the Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Prestonsburg, Ky., 18-20 October, 29-30 November and 1 December 1983. Adm. Law Judge Claude R. Wolfe's decision issued 12 March 1984.

* * *

Brown Company; Brown Company, Livingston-Graham Division; Brown Company, Tri-City Concrete Division; L-T Transport, Inc. (21-CA-14732; 278 NLRB No. 113) El Monte, Vernon and Redlands, Calif. 28 February. In this supplemental decision, the Board held that the single Employer violated Section 8(a)(5) of the Act by transferring cement hauling work from its Livingston-Graham Division to its wholly owned subsidiary, L-T Transport, Inc. midterm of a collective-bargaining agreement with Teamsters Local 420, without the consent of the Union.

Chairman Dotson and Member Babson found that the Employer transferred work out of the bargaining unit in the face of a work protection clause. The transfer turned entirely on a desire to reduce labor costs and was therefore a mandatory subject of bargaining, they said. In these circumstances, the panel majority held, the Employer could not implement this transfer without the consent of the Union. The Union did not consent to the transfer, the panel majority found. Accordingly, Chairman Dotson and Member Babson held that the Employer violated the Act when it unilaterally discontinued its cement hauling operations and transferred the work to L-T Transport.

Member Dennis in a separate concurring opinion noted that she agreed that article XIX of the parties' contract was a valid work preservation clause prohibiting the transfer of the cement hauling work. Accordingly, she would find that the Employer, by transferring the work during the term of the contract, modified a specific term contained in the contract without obtaining the Union's consent; thus, she said, the midterm modification of the contract violated the Act.

In a 1979 decision and order (243 NLRB 769), the Board found that the Employer's action violated Section 8(a)(3) of the Act. Subsequently, the Court of Appeals for the Ninth Circuit remanded the proceeding to the Board for reconsideration. It stated that the Board erred by judging the Employer's actions on the basis of statutory mandates, rather than examining the collective-bargaining agreement between Livingston-Graham and the Union to see whether that agreement

allowed the transfer of the work at issue. The court was of the opinion that article XIX of the contract arguably allowed the work transfer and that, if it did, the Employer had not violated the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

Olympia Fields Osteopathic Medical Center (13-CA-18904; 278 NLRB No. 119) Olympia Fields, Ill. 28 February. The full Board denied a General Counsel motion to withdraw a complaint issued against the Employer on charges filed by Firemen Local 7 and Operating Engineers Local 399. The Regional Director, acting on behalf of the General Counsel, may withdraw the complaint on his own motion, the Board said.

On 10 September 1984, the Board vacated its 1980 decision and order in this proceeding (247 NLRB 155), denied the General Counsel's motion for summary judgment, and remanded the proceeding to the Regional Director for further consideration consistent with the Board's decision in St. Francis Hospital, 271 NLRB 948 (1984). On 30 April 1985, the General Counsel filed a motion to withdraw the complaint and notice of hearing, submitting that the Unions and the Employer advised that they did not wish to present any further evidence in the representation case; and that on 1 February 1985, the Acting Regional Director dismissed the petition in the representation case and revoked the Unions' certification of representative. The General Counsel therefore moved for withdrawal of the complaint.

The Board held that the Regional Director has discretion to withdraw the complaint without leave from the Board. It said that although the case was before the Board earlier on a motion for summary judgment, which the Board granted, the vacating of that order and the remanding of the case to the Regional Director for further consideration of the representation proceeding had the effect of putting the complaint in a prehearing posture. As such, the Regional Director acting on behalf of the General Counsel may withdraw the complaint on his own motion, the Board held.

(Full Board participated.)

* * *

Intersystems Design and Technology Corp. (15-CA-8730; 278 NLRB No. 111) Pascagoula, Miss. 28 February. As did an administrative law judge, the Board found that the Employer unlawfully interrogated employees about their activities for Carpenters Local 569 and threatened them with discharge and plant closure if they selected the Union as their bargaining representative. The judge also found, and the Board concurred, that the Employer violated the Act by laying off employees

without notifying the Union in advance of its decision and without first giving it an opportunity to bargain over the effects of that decision.

The Board did not agree, however, with the judge's conclusion that a backpay and bargaining remedy was not appropriate because, the judge reasoned, the Union waived its right to demand effects bargaining by failing to exercise the right to demand such bargaining. The Board noted that the Employer did not give the Union any advance notice whatsoever of the layoffs, but presented the layoffs as a fait accompli that did not allow the Union any opportunity to request or engage in effects bargaining prior to implementation of that change. Contrary to the judge's finding, the Board said, the Union cannot be held to have waived bargaining over a change that was implemented without timely notice.

The Board thus issued backpay and bargaining orders.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Carpenters Local 569; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Pascagoula, 16 November 1983. Adm. Law Judge Richard J. Linton's decision issued 30 March 1984.

* * *

DeSoto, Inc. (4-CA-12828; 278 NLRB No. 114) Pennsauken, N.J. 28 February. Chairman Dotson and Member Johansen dismissed a complaint alleging that the Employer violated the Act by laying off employees in two bargaining units, by transferring production work from its Pennsauken facility, and by closing that facility without first giving Teamsters Local 115 an opportunity to bargain about the decision and the effects of the work transfer, layoffs, and closing. Dissenting Member Dennis would find that the parties' contract contained a work preservation clause and that the Employer violated the Act "by abrogating its explicit contractual pledge to preserve unit work."

Article XXV of the contract stated: "The Company shall not move its plant from its present location beyond the radius of twenty-five (25) miles without the written consent of the Union, but the Union shall not withhold its consent for arbitrary or capricious reasons."

Unlike Member Dennis, Chairman Dotson and Member Johansen found that the closing of the plant and transfer of the work to other facilities did not modify any provision in the parties' collective-bargaining agreement. They noted that article XXV of

the contract limited the Employer's right to move the Pennsauken plant from its present location. The panel majority concluded, however, that the Employer did not "move" the plant to another location, but instead closed the plant to eliminate excess production capacity. It thus held that the closing of the plant and transfer of the work to other facilities did not constitute a "move" within the meaning of article XXV, and that the Employer did not modify any term of the contract.

Member Dennis would find, as has an arbitrator and the courts, that the closing violated article XXV of the contract.

Contrary to an administrative law judge, Chairman Dotson and Member Johansen found that the Employer satisfied its obligation to bargain about the effects of the Pennsauken closure. They noted that the Employer complied with the Union's request to meet and bargain about numerous effects-related subjects. That more extensive effects bargaining did not occur was attributable to the Union's lack of interest in pursuing such bargaining, the panel majority found.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 115; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Philadelphia, 4-8, 13-15 and 25 April 1983. Adm. Law Judge Norman Zankel's decision issued 23 June 1983.

* * *

SDC Investment, Inc. (20-CA-19782, 20-RC-15319; 278 NLRB No. 97) Dixon, Calif. 25 February. The Board denied a Food and Commercial Workers Local 498 motion for summary judgment and a General Counsel motion for partial summary judgment. It remanded the proceeding for hearing on allegations that the Employer unlawfully threatened employees with plant closure and loss of benefits if they voted for the Union, promised raises if the Union lost the election, and told employees that the Employer had withheld wage increases because of the Union election.

The basis for the summary judgment motions filed by the Union and the General Counsel was an unfair labor practice charge filed on 18 July 1985 by SDC's attorney alleging that SDC violated Section 8(a)(1) of the Act in certain respects. In its summary judgment motion, the Union contended that the charge filed by SDC's attorney must be construed as an admission that SDC engaged in the same conduct alleged in the charge, which is the same conduct alleged in the complaint in the present case, which complaint issued on charges filed by the Union 17 July 1985.

The Board noted that a letter accompanying the charge filed by SDC's attorney made it clear that the purpose of filing the charge was to present the Board with an issue concerning the authority of hearing officers to rule on certain matters in election objection cases; SDC had no intention of admitting that it engaged in any unlawful conduct, the Board said. Under such circumstances, the Board would not grant summary judgment.

The Board also stated its strong disapproval of the "procedural machinations" resorted to by SDC's counsel in this matter. It stated: "The Board is not without authority to deal with such instances of aggravated misconduct, and, if it recurs, is fully prepared to do so."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Food and Commercial Workers Local 498; complaint alleged violation of the Act's Section 8(a)(1). Union motion for summary judgment filed 11 November 1985. General Counsel's motion for partial summary judgment filed 21 November 1985.

* * *

Pacific Mutual Door Company (18-CA-7598; 278 NLRB No. 120) Roseville, Minn. 28 February. Although differing with an administrative law judge in rationale and remedial provisions, the Board agreed with him that two economic strikers, members of Teamsters Local 120, were unlawfully refused reinstatement, at a time when the Employer had not hired permanent replacements, upon their unconditional request for reinstatement. A third striker was held to have been justifiably denied reinstatement because of his serious strike misconduct--discharging an "air gun" near the plant entrance.

Following the expiration of their contract on 15 July 1981, the Employer's four drivers went on strike 2 September 1981. On 11 September the Employer entered into a contract with Transportation Services, Inc. (TSI), a driver leasing company, which provided the Employer with drivers throughout the strike. The Board noted that the contract was temporary, allowing either party to terminate the contract within 30 days notice. On 20 November 1981 the picketing ceased and the Union made an unconditional offer to return to work. The Employer, however, on 1 December 1981, notified the Union that it had made a "tentative decision" to permanently subcontract the driving work, and on 18 December entered into a 1-year contract with TSI. On 23 February 1982 the drivers resumed picketing, and on 10 and 17 May the Employer made written offers of reinstatement to two drivers. The Union rejected these offers claiming that the offers bypassed the employees' bargaining representative and did not follow traditional contract seniority.

The Board agreed with the judge that the Employer's obligation to reinstate striking drivers arose with the Union's unconditional offer of 20 November 1981. However, the Board disagreed with the judge who dated reinstatement for backpay purposes from 30 days after 20 November, thereby taking into account the 30-day cancallation provisions in the Employer's contract with TSI. The Board held that the date was 18 December 1981, at which time the Employer's obligation under the 11 September contract with TSI had apparently ceased because of the new 1-year contract with TSI.

Further, the Board agreed with General Counsel and the Union that there continued to be jobs into which the Employer could reinstate the former strikers. The Board held that by virtue of the 18 December contract, the Employer and TSI became "joint employers" and therefore the jobs of the former strikers were not eliminated, and that the Employer "in essence hired new employees instead of reinstating" the strikers after they made an unconditional request.

In reaching this finding the Board noted the ultimate direction the Employer has over the supervision of TSI's drivers; its control over the number of drivers and which drivers work for it; its control over their conduct in operating its vehicles and its responsibility for their conduct in operating its vehicles; its control over the nature of their work and the daily conditions under which they work; its control over the hours they work; its indirect control over the amount of wages they receive and their daily expenses; and its control of the benefits received as paid holidays and paid vacations.

Finally, the Board disagreed with the General Counsel and found the Employer's reinstatement offers of May 1982 were neither invalid nor conditional. Accordingly, the Board found that the Union's rejection of the Employer's May 1982 reinstatement offers to the two employees tolled their backpay obligation and satisfied the Employer's reinstatement obligation with respect to the alleged unfair labor practices.

(Chairman Dotson and Member Dennis and Johansen participated.)

Charges filed by Teamsters Local 120; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Minneapolis, 25-26 October 1982. Adm. Law Judge Russell M. King, Jr.'s decision issued 29 December 1982.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Bell & Howell/Columbia Pictures Video Services (Southern Association of Theatrical Stage Employees and Moving Picture Machine Operators District No. 2 Locals), Garden Grove, Calif. 12 February. 21-CA-24066; JD-(SF)-8-86, Earldean V.S. Robbins, Adm. Law Judge

Cullum Mechanical Construction, Inc. (Individual), Charleston, S.C. 24 February. 11-CA-11763; JD-(ATL)-15-86, J. Pargen Robertson, Adm. Law Judge

Frontier Linen Supply, Inc., debtor in possession and Raymond Foley, its alter ego (Teamsters Local 449 and Combination Dry Cleaners, Launderers & Service Stores Employees Local 168), Buffalo, N.Y. 24 February. 3-CA-11012(R), 11215(R); JD-(NY)-6-86, Howard Edelman, Adm. Law Judge

Sewell-Allen Big Star No. 52 (Food & Commercial Workers Local 1529), Memphis, Tenn. 24 February. 26-CA-11018; JD-(ATL)-9-86, Philip P. McLeod, Adm. Law Judge

Nørsk Hydro Aluminum, Inc. (Machinists), Rockledge, Fla. 24 February. 12-CA-11602; JD-(ATL)-14-86, Howard I. Grossman, Adm. Law Judge

Food and Commercial Workers Local P-9 (First Bank Systems, Inc.) (Geo. A. Hormal & Co.), Austin, Minn. 26 February. 18-CC-1091, et al.; JD-42-86, Thomas D. Johnston, Adm. Law Judge

Horizon Foods, Inc. (Food & Commercial Workers Local 1550), Chicago, Ill. 26 February. 13-CA-24710, et al., 13-RC-16425, 16566; JD-43-86, Frank H. Itkin, Adm. Law Judge

Pittsburgh Penn Oil Co., Inc. (Teamsters Local 273), Pittsburgh, Pa. 26 February. 6-CA-17437; JD-44-86, Burton S. Kolko, Adm. Law Judge

Sonicraft, Inc. (Teamsters Local 743), Chicago, Ill. 26 February. 13-CA-22448(E); JD-45-86, Claude R. Wolfe, Adm. Law Judge

Airstream, Inc. (Auto Workers), Jackson Center, Ohio. 26 February. 8-CA-18263, 8-RC-13163; JD-36-86, Marvin Roth, Adm. Law Judge

Sorenson Lighted Controls, Inc. (Food and Commercial Workers Local 317), Hartford, Conn. 27 February. 39-CA-2518, 39-RC-581; JD-46-86, Norman Zankel, Adm. Law Judge

Talawanda Springs, Inc. (Individual), College Corner, Ohio. 28 February. 9-CA-22377; JD-50-86, Leonard M. Wagman, Adm. Law Judge

C.E.K. Industrial Mechanical Contractors, Inc. Cam-Ful Industries, Inc. (Plumbers Local 54), Syracuse, N.Y. 28 February. 3-CA-12011; JD-47-86, Donald R. Holley, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

BBC Enterprises, Inc. (3-RC-8839), Buffalo, N.Y. 19 February. Production and maintenance employees shall vote for representation by Truck Drivers Local 449, or for no representation.

Betsy Ross Health Related Facility (3-RC-8846), Rome, N.Y. 21 February. Regular full-time and part-time nurses aides, dietary employees, housekeeping employees, all other service and maintenance employees and office clerical employees shall vote for representation by Service Employees Local 200, or for no representation.

NATIONAL LABOR RELATIONS BOARD
DIVISION OF INFORMATION
WASHINGTON, DC

27 February 1986

NOTICE OF PUBLICATION

The 47th Annual Report of THE NATIONAL LABOR RELATIONS BOARD for the fiscal year ended 30 September 1982 has been published by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Orders for the 47th Annual Report, Stock No. 031-000-00241-9, price $7.50, should be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Orders must be accompanied by cash, check or money order--unless the purchaser has a Deposit Account Number. Do NOT send orders or payments to the NLRB.

An order form follows:

ORDER FORM To: **Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402**

Enclosed is $ _____ ☐ check,
☐ money order, or charge to my
Deposit Account No.
☐☐☐☐☐☐☐–☐

Order No._____

Credit Card Orders Only

Total charges $_____ **Fill in the boxes below**

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Send _____ copies of the 47th Annual Report of the National Labor Relations Board.
Stock No. 031-000-00241-9. Price: $7.50

Company or personal name

Additional address/attention line

Street address

City **State** **ZIP Code**

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

v-2007

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

3 - 7 MARCH 1986 (W-2007)

NEWARK PUBLIC LIBRARY
APR 3 1986
U. S. GOVT. PUBS.
DEPOSITORY 375

CASES SUMMARIZED

Marion Steel Co., Inc.	Marion, Ohio	1
Montgomery Elevator Co. and the Elevator Constructors	Knoxville, Tenn.	5
Port East Transfer, Inc.	Rosedale, Md.	1
Rapid Fur Dressing, Inc. and Rapid Fur Dressing, Inc., Debtor-In-Possession	New York, N.Y.	4
Roseburg Lumber Co.	Weed, Calif.	2
Sachs Electric Co.	Holland, Mich.	5
Singer (Howard R.) Legal Services	Pittsburgh, Pa.	3

OTHER CONTENTS

List of Decisions of Administrative Law Judges 6

List of Directions of Elections by Regional Directors 7

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

LR1.15/2:

Port East Transfer, Inc. (5-CA-17286; 278 NLRB No. 125) Rosedale, Md. 28 February. The Board affirmed an administrative law judge's decision that the Employer violated the Act by discharging Richard Shelley after he wrote pro-Union graffiti on the Employer's restroom wall and by informing Shelley that his support for a union was the reason for his discharge.

Shelley admitted writing the following on the restroom wall: "Damn right, we need a union. It would stop things like Ed Hale's (Employer's president) drug testing." It was not that Shelley's graffiti defaced company property but rather the content of his statements that caused management concern, the judge said. She noted that Hale strongly opposed union representation, and had told his son that it was necessary to cut union organizers out "like a cancer" when his son asked whether Shelley would be reinstated. These factors raised the inference that Hale was motivated by Shelley's union activity in deciding to fire him, and the judge concluded the Employer failed to rebut this inference.

The judge also concluded that the Employer violated the Act when Hale, Jr. responded to Shelley's request for an explanation of why Hale, Sr. fired him by repeating his father's words that "you have to cut it (the union) out like a cancer."

As "heir apparent" to the company and in training for a supervisory position, Hale, Jr. was found to be an agent of the Employer.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Richard C. Shelley, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Baltimore, 22 August 1985. Adm. Law Judge Mary Ellen R. Benard's decision issued 19 November.

* * *

Marion Steel Company, Inc. (8-CA-18075; 278 NLRB No. 127) Marion, Ohio. 28 February. The Board affirmed an administrative law judge's decision that the Employer violated the Act by discharging Donald Williams because of his organizing activities for the Steelworkers, and by threatening employees with discipline or discharge if they engaged in union activities.

The Employer argued that Williams, the leading Union organizer, was discharged because of his "bad attitude," which the judge concluded was really his pro-union attitude.

While Chairman Dotson and Member Babson found that in the context of this particular case it was clear that the Employer's use of the term "bad attitude" was a reference to Williams' pro-union activities, they disavowed the judge's finding to the extent it suggested that a company's complaint about an employee's bad attitude is necessarily a euphemism for a pro-union attitude. Member Dennis found it unnecessary to comment on that aspect of the judge's decision.

In addition the judge held that statements that Williams made to foreman Tom Blankenship, which formed in part the basis for the discharge, were union related statements uttered in the context of protected union activity. The judge believed that asking the foreman if he would like to sign a union card was "merely a bit of good-natured needling, coupled with a touch of braggadocio...." Another statement by Williams, while "vulgar and offensive," was nevertheless not directed at the foreman, was not personal and was not uttered in anger, the judge said. He also noted that the issue was not pursued by the foreman, but by management who solicited the foreman's account after first learning about the incident from another source. The judge concluded: "In short, the momentary exchange was not the motivating cause of the discharge of David Williams."

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Marion, 18 July 1985. Adm. Law Judge Walter H. Maloney, Jr.'s decision issued 19 August.

* * *

Roseburg Lumber Company (20-CA-19170; 278 NLRB No. 124) Weed, Calif. 28 February. The Board affirmed an administrative law judge's findings that the Employer unlawfully interrogated employees about their activities and sentiments for Lumber, Production and Industrial Workers Local 2608, created an impression of surveillance of union activities, threatened employees with reprisals because they supported the Union, and threatened to close its mill if employees selected the Union.

The violations occurred during a 1984 organizing campaign at the mill.

In its defense, the Employer contended that under the Board's holding in Rossmore House, 269 NLRB 1176 (1984), its officials and supervisors were free to engage in discussions about the Union with employees and to question them about their union sentiments. The judge pointed out, however, that while an employer does not violate the Act when discussing his views on union organization with employees or questioning open and active union adherents about their union sentiments,

a violation does occur if the employer's statements contain express or implied threats or promises. Here, he found, the Employer threatened plant closure and reprisals, and conveyed the impression that it was engaging in surveillance of all union supporters, whether they were open or covert in their activities. The judge thus held the Employer in violation of the Act.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Lumber, Production and Industrial Workers Local 2608; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Redding, 28 March 1985. Adm. Law Judge Gordon J. Myatt's decision issued 25 November 1985.

* * *

Howard R. Singer and Michael E. Davis, A Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis (6-CA-16426; 278 NLRB No. 123) Pittsburgh, Pa. 7 March. The Board concluded that the Employer's answers to all but three paragraphs of the General Counsel's backpay specification framed certain factual issues sufficient to require a hearing concerning the issues of successorship, the tolling of backpay obligations, and the amount of backpay due to the discriminatee. It accordingly remanded the proceeding for a hearing on those issues.

Following the Third Circuit's enforcement of a Board order directing the Employer to make Carol Ann Canovali whole for any loss of earnings resulting from her unlawful termination, a controversy arose over the backpay owed. The Regional Director issued a backpay specification and notice of hearing, but the Employer failed to respond by 5 August 1985, the time prescribed by the Board's Rules and Regulations. The General Counsel notified the Employer by letter on 12 August that unless an answer was received "immediately" a motion for summary judgment would be filed. The General Counsel received the Employer's answer on 22 August. The Board rejected the General Counsel's argument that the answer was untimely and found that the General Counsel's letter of 12 August waived the 5 August deadline and granted the Employer time in which to file its answer. The Board held that the 22 August answer was within a reasonable time, and therefore timely.

The Board did, however, grant the General Counsel summary judgment regarding three paragraphs of the Employer's answer dealing with the method of calculating gross backpay, in light of the fact the Employer did not furnish appropriate supporting figures for its alternative method of computation.

(Chairman Dotson and Members Dennis and Johansen participated.)

General Counsel's motion to strike and supplemental motion for summary judgment filed 30 August 1985.

* * *

Rapid Fur Dressing, Inc. and Rapid Fur Dressing, Inc., Debtor-In-Possession (2-CA-20410; 278 NLRB No. 126) New York, N.Y. 7 February. Members Dennis and Babson granted summary judgment and found that the Employer violated the Act by refusing to make contractually required payments to a vacation fund and to the pension plan. Chairman Dotson would hold that the Employer's conduct "constitutes nothing more than a contract violation," and he would dismiss the complaint.

The Board panel majority noted that the Employer admitted that it ceased making the contractually required payments, without notifying Food and Commercial Workers Local 122. It further pointed out that pension plans and vacation benefits are well within the scope of the Act's prohibition against unilateral midterm modifications of a collective-bargaining agreement. Therefore, on a finding that there were no material facts in dispute, Members Dennis and Babson granted summary judgment.

Chairman Dotson would find that a breach of contract is not necessarily an unfair labor practice. He said, "the Board has failed to strike a proper balance--indeed any balance--between those circumstances in which the Board deems a dispute to be one of contract breach and leaves the parties to their judicial remedies and those in which the Board acts to remedy a fundamental abrogation of a bargaining obligation and finds an unfair labor practice." Chairman Dotson would hold that, if a party engaged in conduct reflecting a substantial repudiation of its contractual and bargaining obligation, particularly if that conduct occurs in conjunction with other statutory violations, the Board must decide the statutory issues; but, if the parties seek to enmesh the Board in disputes arising solely over contract interpretation or compliance, Chairman Dotson would hold that the Board must decline to be involved. In this case, he said, the Board must decline to be involved.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Food and Commercial Workers Local 122; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 8 February 1985.

* * *

Montgomery Elevator Company and the Elevator Constructors (10-CA-20626, 10-CB-4453; 278 NLRB No. 122) Knoxville, Tenn. 28 February. The Board affirmed an administrative law judge's decision that the Union unlawfully insisted on and caused the termination of D. Webb Robbins because Robbins was not a Union member; and that the Employer unlawfully threatened to lay off Robbins, and then demoted and terminated him at the Union's request.

The Union also violated the Act, it was found, by telling Robbins that it was insisting that he be a Union member in order to continue his employment with the company.

The judge based his finding of violation on credited testimony concerning Employer statements made to Robbins and on the timing of the discharge, following a meeting of the Union's representative with the Employer's higher echelon of management.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by D. Webb Robbins; complaint alleged violation of the Act's Section 8(a)(1) and (3) and 8(b)(1)(A) and (2). Hearing at Knoxville, 22-23 May 1985. Adm. Law Judge Lawrence W. Cullen's decision issued 9 October.

* * *

Sachs Electric Company (7-CA-23230; 278 NLRB No. 121) Holland, Mich. 28 February. Contrary to an administrative law judge, Chairman Dotson and Member Johansen found appropriate deferral to a decision of a Labor Management Committee. They accordingly dismissed an allegation that the Employer unlawfully laid off Joseph Verlin for complaining about a general foreman's failure to share overtime work, when the company's contract with Electrical Workers (IBEW) Local 107 required sharing of overtime.

Member Dennis, dissenting in part, would not defer to the Labor-Management Committee's decision, complaint allegations that Verlin was unlawfully laid off for his activities as an employee in attempting to enforce the contract. She would find an Act violation.

The Union had filed grievances over Verlin's layoff alleging that Verlin had been improperly selected for layoff, and that the company's general foreman had failed to comply with the contract by not allocating overtime work to employees. Subsequently, the Labor Management Committee concluded that Verlin's layoff was not improper. Thereafter, on a charge filed by Verlin, the General Counsel issued the complaint in this case, alleging (1) Verlin was

unlawfully selected for layoff because of his union steward activities or (2) Verlin was unlawfully selected as an employee acting on behalf of other employees to enforce the contract.

The judge found deferral appropriate on the first issue. He also found that the question whether Verlin was selected for layoff for engaging in protected concerted activity as an employee was not presented to the Committee. He thus declined to defer to the Committee's decision and found, on the merits, that Verlin was unlawfully laid off for complaining over the overtime work matter.

Contrary to the judge, the Board panel majority held that deferral was appropriate. Chairman Dotson and Member Johansen found that the contractual issue considered by the Committee and the unfair labor practice issue were factually parallel, and that the Committee was generally presented with the facts needed to resolve the unfair labor practice issue. They thus concluded that the standards for deferral set forth in Olin Corporation, 268 NLRB 573 (1984), were met.

Member Dennis found that the Committee did not address, nor did it have the power to address, any issue of discrimination against Verlin on account of his contract complaints as an employee because, she said, the sole article of the labor agreement allegedly violated protected only stewards. She would thus find that the issues involved in the grievance and unfair labor practice proceedings were not parallel and that deferral to the Committee decision was inappropriate.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Joseph T. Verlin, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Grand Rapids, 15 August 1984. Adm. Law Judge Benjamin Schlesinger's decision issued 21 December 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Ironworkers Local 433 (United Steel, Aram Kazazian Construction, Inc. and Carlson Southwest Corp.), Los Angeles, Calif. and Las Vegas, Nev. 14 February. 31-CC-1761, et al.; JD-(SF)-14-86, Gordon J. Myatt, Adm. Law Judge

Plumbers Local 460 (Individuals), Bakersfield, Calif. 24 February. 31-CB-6234, et al.; JD-(SF)-16-86, Harold A. Kennedy, Adm. Law Judge

Bridgeway Oldsmobile, Inc. (Food and Commercial Workers Local 1095), Hayward, Calif. 28 February. 32-CA-7184; JD-(SF)-18-86, Michael D. Stevenson, Adm. Law Judge

Lone Star Institutional Grocers (Teamsters Local 745), Dallas, Tex. 3 March. 16-CA-12178, 12224; JD-(ATL)-11-86, Richard J. Linton, Adm. Law Judge

Gilberton Coal Co., Gilberton Energy Corp., Bear Ridge Shops, Inc., Gil-Pre Corp., B-D Mining Co., and R & R Energy Corp. (Mine Workers), Gilberton, Pa. 4 March. 4-CA-14515, 14812; JD-52-86, Thomas A. Ricci, Adm. Law Judge

Laborers Local 225, District Council of Chicago and Vicinity (Chicago Building Wreckers Association) (National Wrecking Co.), Chicago, Ill. 5 March. 13-CB-10957; JD-53-86, Thomas R. Wilks, Adm. Law Judge

Link Mfg. Co. (Auto Workers), Oak Park, Mich. 6 March. 7-CA-23912, 23960, 7-RC-17388; JD-54-86, Robert A. Giannasi, Adm. Law Judge

Federated Answering Service, A Div. of Sherwood Diversified Services, Inc. (Telephone Answering and Communication Service Union Local 780), New York, N.Y. 6 March. 2-CA-19496; JD-(NY)-17-86, Joel P. Biblowitz, Adm. Law Judge

Teamsters Local 610 (Albert H. Hoppe, Inc.) (Buchholz Mortuaries, Inc.), St. Louis, Mo. 6 March. 14-CC-1844; JD-49-86, Marvin Roth, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Charles F. Cates & Sons, Inc. (11-RC-5346), Faison and Spivey's Corner, N.C. 3 March. Regular full-time and part-time production and maintenance employees, quality assurance employees and field mechanics shall vote for representation by Food & Commercial Workers Local 525, or for no representation.

Med-Care Associates, Inc. (18-RD-1539), Minneapolis, Minn. 4 March. Full-time and regular part-time registered nurses shall vote for representation by Food and Commercial Workers Local 653, or for no representation.

Fitger's Inn, Restaurant and Tap Room (18-RC-13891), Duluth, Minn. 28 February. Full-time and regular part-time employees shall vote for representation by Hotel and Restaurant Employees Local 99, or for no representation.

Sun Litho, Inc. (31-RC-5971), Van Nuys, Calif. 26 February. Full-time and regular part-time pressroom, preparatory department and production department employees shall vote for representation by Graphic Communications Local 404, or for no representation.

Nishino and Taniguchi Produce Co., Inc. (31-RD-1005), Santa Maria, Calif. 3 March. Full-time and part-time warehousemen, combination warehousemen-drivers, drivers and line drivers shall vote for representation by Teamsters Local 381, or for no representation.

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Name and Address _____

_____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2008

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

10 - 14 MARCH 1986 (W-2008)

NEWARK PUBLIC LIBRARY

APR 1 1986

U. S. GOVT. PUBS.
DEPOSITORY 378

CASES SUMMARIZED

Bricklayers Local 15	Shelton, Conn.	5
Bricklayers Local 17	San Diego County, Calif.	9
Ground Handling, Inc.	Westchester County, N.Y.	2
Harte & Company, Inc.	Bound Brook, N.J.	3
Island Spring, Inc.	Vashon, Va.	5
Landmark Industries, Inc.	Los Angeles, Calif.	1
Leapley Co.	Washington, D.C.	3
Northern District of Connecticut Iron Workers Local 15, Joint Apprenticeship Committee	Hartford, Conn.	1
Olympic Limousine Service, Inc.	Farmingdale, N.J.	6
Red Arrow Freight Lines, Inc.	Dallas, Tex.	6
T & T Machine Co., Inc.	Fairmont, W. Va.	8
Zack Co.	Midland, Mich.	7

LR1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 11

List of Directions of Elections by Regional Directors 12

Notice of Publication: Volume 272 of Decisions and Orders of the National Labor Relations Board

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Landmark Industries, Inc. (21-CA-22391(E); 278 NLRB No. 129) Los Angeles, Calif. 10 March. The Board affirmed an administrative law judge's dismissal of an Employer application for fees and expenses under the Equal Access to Justice Act.

Because credibility determinations were critical to the judge's findings in the underlying unfair labor practice case, the judge concluded that the General Counsel had a reasonable basis both in law and fact, and therefore had substantial justification, for issuing a complaint on behalf of Upholsterers Local 15 alleging Employer refusal to bargain in good faith.

Had she credited certain testimony, the judge pointed out, inferences adverse to the Employer position could reasonably have been drawn.

(Chairman Dotson and Members Dennis and Babson participated.)

Application for fees and expenses under EAJA filed 23 July 1985. Adm. Law Judge Earldean V.S. Robbins' supplemental decision issued 20 December.

* * *

Northern District of Connecticut Iron Workers Local 15, Joint Apprenticeship Committee (39-CA-2434; 278 NLRB No. 131) Hartford, Conn. 11 March. The Board affirmed an administrative law judge's decision that Union, through its participation in a Joint Apprentice Committee (JAC), violated the Act by unlawfully discharging apprentice coordinator Bruce Gilbert because of his internal union activities.

The JAC was established by an agreement between the Union and Associated General Contractors which provided for the maintenance of apprentice and journeyman training programs to be operated by the JAC, an incorporated association whose members are appointed by the Union and the Contractors Association. Gilbert, as coordinator, provided the actual supervision and implementation of the program.

The judge noted that it was Gilbert's "unenviable position" to be working for a committee composed of four members, including one with whom his relations were "terrible"---Lloyd Etkin---and two members who had been appointed by Etkin when Etkin was president of the Local.

The judge concluded that the evidence presented a picture of two men, Gilbert and Etkin, on opposite sides politically in Union affairs, engaged in periodic battles to secure Union office, bristling with animosity towards each other. The judge found that Etkin made numerous statements to the effect that he would "pry Gilbert loose" from his job as JAC coordinator together with statements linking that intention to the fact that Gilbert had worked against him within the Union. Relevant also was that Gilbert's discharge took place at a time when the composition of the committee was about to undergo a significant change, which would have diminished Etkin's power, the judge said.

Finding the reasons cited by the JAC for the discharge were either pretextual or unsupported by the evidence, the judge agreed with the General Counsel that Gilbert was discharged because he had engaged in protected concerted activity.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Bruce Gilbert, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Hartford, 25-27 March 1985. Adm. Law Judge Harold B. Lawrence's decision issued 8 August.

* * *

Ground Handling, Inc. (2-RC-20034; 278 NLRB No. 142) Westchester County, N.Y. 12 March. The Board dismissed a representation petition filed by Teamsters Local 732 because the Employer, a ground fleet service for airline carriers, is subject to the Railway Labor Act (RLA).

The determination was made by the National Mediation Board, upon a request from the NLRB. Based upon the nature of the activities performed by GHI which are traditionally performed by employees of carriers in the airline industry and the degree of control exercised by the airlines which GHI serves, employees performing such activities are subject to the RLA, the NMB had advised the NLRB.

Because Section 2(2) of the Act provides in pertinent part that the term "employer" as used in the Act should not include any person subject to the RLA, the petition was dismissed for lack of the Board's jurisdiction.

(Members Dennis, Babson and Stephens participated.)

* * *

The Leapley Company (5-CA-15157; 278 NLRB No. 140) Washington, D.C. 14 March. The Board affirmed the decision of an administrative law judge that the Employer violated the Act by its unilateral and untimely attempt to withdraw from a multi-employer bargaining group---the National Electric Contractors Association, Washington, D.C. Chapter---and its attempt to bargain with Electrical Workers (IBEW) Local 26 individually.

The Employer gave written notice to the Union of its intent to withdraw on 28 December 1982, which was timely according to the contractual date set for notice to modify the contract, but approximately 30 days late according to the notice of withdrawal provision established in the Employer's letter of assent to multiemployer bargaining. The judge agreed with the General Counsel and Union and found that the Employer's failure to give timely notice of withdrawal in accordance with the terms of the letters of assent authorizing the Association to represent the Employer prevented the notice from being timely or valid.

The judge said this conclusion was in accord with the Board's decision in Retail Associates, 120 NLRB 388 (1958), stating that it was the "purpose of the Board...to establish minimum rules that would prevent either the employers or the union from unilaterally withdrawing from the unit at any time it appeared to be in the short term strategic interest of the party irrespective of the threat to bargaining stability and consistency."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Electrical Workers (IBEW) Local 26; complaint alleged violation of the Act's Section 8(a)(1) and (5). Case submitted to the Division of Judges on a stipulated record, executed by the parties on 22 and 26 September 1983. Adm. Law Judge Sidney J. Barban's decision issued 3 February 1984.

* * *

Harte & Company, Inc. (22-CA-10889, 22-CB-4557; 278 NLRB No. 128) Bound Brook, N.J. 13 March. Contrary to an administrative law judge, the Board did not find that the Employer and Leather Goods and Novelty Workers Local 106 violated the Act when they agreed to extend their collective-bargaining agreement--including its union-security article--to the company's new Bound Brook facility. The Bound Brook facility was essentially an extension of the company's Brooklyn operation, the Board said.

The Union did violate the Act, Chairman Dotson and Member Dennis held, by telling newly-hired Bound Brook employees that employees who did not join the Union would lose their jobs. Member Johansen would dismiss this allegation since, he said, there was no showing that the Union sought the discharge of any employee or did other than advise employees that they were required to join the Union.

In finding that the Brooklyn collective-bargaining agreement should have remained in effect when Harte moved to Bound Brook, the Board noted that the operation in Bound Brook was substantially the same as in Brooklyn; that the Bound Brook plant produced the same products; that it used the same machinery to produce those products; that the employees performed essentially the same functions; and that former Brooklyn employees ultimately constituted more than 40 percent of the Bound Brook employee complement. That it took eight months to complete the transfer of operations was not unreasonable, the Board held contrary to the judge.

The judge had concluded that it took too long for a substantial percentage of transferees to arrive at Bound Brook and that Bound Brook was fully operational before transferees constituted 40 percent of the workforce. He thus found violations of the Act in the Employer's extension, and the Union's acceptance, of recognition as bargaining agent when the plant was fully operational and before transferees constituted 40 percent of the workforce. The Board rejected the judge's reasoning.

As for the Union's remarks concerning membership, the Board panel majority found that the Union threatened discharge of new employees notwithstanding that those employees had been working for less than the 30-day grace period to which they were entitled before they could be discharged for noncompliance with the union-security clause of the contract.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Christopher Bates, an Individual; complaint alleged violation of the Act's Section 8(a)(1), (2), (3) and 8(b)(1)(A) and (2). Hearing at Newark, 29-31 March 1982. Adm. Law Judge Raymond P. Green's decision issued 30 June 1982.

* * *

Bricklayers Local 15 (39-CD-27; 278 NLRB No. 135) Shelton, Conn. 14 March. The Board awarded the dry setting and laying of 12-inch by 12-inch by 1½-inch precast concrete pavers for walkways at the Black and Decker Corporation jobsite to Fusco Corporation employees represented by Laborers Local 665, and not to those represented by Bricklayers Local 15.

After Fusco assigned the work to Laborers-represented employees, an agent of Bricklayers Local 15 threatened to pull employees represented by Local 15 off the job unless the Employer reassigned the paving work to employees represented by Local 15.

The Board awarded the work on the basis of area practice and Employer preference and past practice. It further held that Bricklayers Local 15 is not entitled by means proscribed by the Act to force the Employer to assign the disputed work to employees Local 15 represents.

(Members Dennis, Babson and Stephens participated.)

* * *

Island Spring, Inc. (19-RD-1950; 278 NLRB No. 130) Vashon, Va. 11 March. Upon the Employer's request for review of the Regional Director's administrative dismissal of a decertification petition filed by John R. Olson, an Individual, a Board majority concluded that the petition should be reinstated. The majority noted that the unfair labor practices upon which the Regional Director based his dismissal were resolved pursuant to an informal settlement agreement, the Employer fully complied with the settlement agreement, and the unfair labor practice case had been closed by the Regional Office. Under these circumstances, relying on the Board's decision in Passavant Health Center, 278 NLRB No. 77 (10 February 1986), the majority found it appropriate to reinstate the petition.

Concurring in the result, Chairman Dotson agreed that the petition should be reinstated as he did not regard the unfair labor practice allegations as sufficiently serious to interfere with the election.

Dissenting, Member Johansen would affirm the Regional Director's dismissal of the petition, as he dissented in Passavant and views the unfair labor practice allegations as evincing a repudiation of the Employer's collective-bargaining obligations toward Service Employees Local 6 and, therefore,

sufficiently serious to interfere with the employees' free choice in the election.

(Full Board participated.)

* * *

Olympic Limousine Service, Inc. (22-CA-13135, 13205, 22-RC-9155; 278 NLRB No. 133) Farmingdale, N.J. 11 March. Agreeing with an administrative law judge, the Board held that the Employer violated the Act by refusing to bargain with Food & Commercial Workers Local 56, the exclusive collective-bargaining representative in a mechanic unit, and by unilaterally discontinuing the operation of its second shift.

In so doing, the Board adopted the judge's recommendation that the Employer's objection to the election conducted on 23 March 1984---that employee Kyle Willey physically threatened certain employees if they did not vote for the Union while acting on behalf of the Union---be overruled based on the judge's determination that Willey was a credible witness to the effect that he did not engage in the alleged threats.

Additional violations were found by the judge in the Employer's constructive discharge of Willey because of his Union activity, its threatening employees with more onerous working conditions if they selected the Union as their bargaining representative, and creating an impression among its employees that their union activities were under surveillance.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Food & Commercial Workers Local 56; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Newark, 16 August 1984. Adm. Law Judge Thomas E. Bracken's decision issued 19 August 1985.

* * *

Red Arrow Freight Lines, Inc. (16-RC-8751; 278 NLRB No. 137) Dallas, Tex. 13 March. The Board held that an employee who was on sick leave from 22 September 1984 through a representation election held 12 April 1985 was an eligible voter. It accordingly overruled the challenge to Lucille Miller's ballot and directed that her ballot be opened and counted.

The election had resulted in 12 votes for, and 12 against, representation by Teamsters Local 745, with 5 challenged ballots. In the absence of exceptions, the Board adopted pro forma a hearing officer's recommendation that the challenges to ballots cast by Norris Hayes and Ken Eubanks be sustained and that the challenge to the ballot of Emma Greer be overruled.

A hearing officer had found Miller ineligible to vote on the grounds that she did not have a reasonable expectation of returning to work. The Employer argued that an employee on sick leave is presumed eligible to vote absent evidence that the employee has been terminated or has resigned. The Employer submitted that there was no such evidence and, therefore, that Miller was an eligible voter.

Members Dennis and Johansen agreed with the Employer. They noted there was nothing in Miller's personnel file showing that she did not intend to return to work. They further pointed out that she did not quit, nor was she discharged, before the election.

In a footnote, Member Babson said he did not join in his colleagues' view that the presumption of eligibility of a disabled employee or an employee on sick leave may be rebutted only by an affirmative showing that the employee has not resigned or been discharged. Rather, in circumstances where it is not clear whether such an employee has retained his status as an employee, Member Babson additionally would consider evidence as to the employee's reasonable expectation of future employment, and would find the presumption rebutted where it is shown by clear and convincing evidence that as of the time of the election the employee has no such reasonable expectation. Here, he noted the Union's contention that Miller had no reasonable expectation of future employment was based merely on her absence from work for a period of approximately seven months prior to the election and on hearsay testimony concerning Miller's physical condition.

(Members Dennis, Johansen and Babson participated.)

* * *

The Zack Company (7-CA-19573; 278 NLRB No. 134) Midland, Mich. 13 March. Members Johansen and Babson agreed with an administrative law judge that the Employer unlawfully laid off Ronald Hayes and Timothy Sanak in retaliation for their having requested the Sheet Metal Workers to file a grievance against the company. Chairman Dotson, dissenting on this issue, would find that the Employer lawfully laid off the two workers for lack of productivity.

On another allegation, the Board found that Hayes and Sanak were not engaged in protected concerted activity when complaining to other employees about their grievances. Their conduct interfered with production and therefore lost the protection of the Act, the Board said.

In finding that the Employer unlawfully laid off the two employees for seeking to file a grievance, the Board panel majority noted, among other things, that Hayes and Sanak were not as unproductive as the Employer claimed, and that the Employer did not consistently discipline employees for insufficient production. It thus found that the Employer did not rebut the General Counsel's prima facie case.

Chairman Dotson noted that the company's second shift superintendent rejected a foreman's recommendation, made on a Friday, to lay off Hayes and Sanak in order to give the two employees the weekend to "cool off." On Monday, the superintendent decided to lay them off only after the two employees continued to disrupt the work force and production. Chairman Dotson stated: "I believe 2 days of nonproductivity and disruption provide a sufficient, lawful basis for the Respondent's action."

Dismissed was an allegation that the Employer violated the Act when a foreman remarked, with reference to Hayes and Sanak, "If they don't be quiet, they're gonna get laid off."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Ronald Scott Hayes, an Individual; complaint alleged violation of the Act's Section 8(a)(1). Hearing 3 June and 6-7 July 1983. Adm. Law Judge Stephen J. Gross' decision issued 17 April 1984.

* * *

T & T Machine Company, Inc. (6-CA-17359, 17662; 278 NLRB No. 139) Fairmont, W. Va. 14 March. The Board affirmed an administrative law judge's decision that the Employer violated the Act by laying off four employees because of their activity on behalf of Mine Workers District 31.

The judge noted that the four employees were known by the Employer to be members of the Union's in-house committee and were summarily laid off during a period when

an organizing drive was in progress. This circumstance, coupled with the threat "to get rid of" anyone who was for the Union uttered by the Employer's president at the outset of the drive--a threat which was to be reiterated by him and other officials of the company at least nine times during the drive in the context of other examples of rampant anti-union animus---led the judge to conclude that the layoffs were motivated at least in part by that animus.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Mine Workers District 31; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Fairmont, 4-7 March 1984. Adm. Law Judge Robert T. Wallace's decision issued 1 November 1985.

* * *

Bricklayers Local 17 (21-CB-8984, et al.; 278 NLRB No. 132) San Diego County, Calif. 11 March. The Board agreed with an administrative law judge that the Union did not violate the Act by failing to bargain with Ruhm Tile and Marble, Inc., Florentine Company, or Western Tile Company, Inc. for new contracts because the Employers were already bound by their respective collective bargaining agreements with the Union at the time the Employers requested bargaining.

Until mid-1983 the three charging parties and eight other tile contractors belonged to a multiemployer bargaining association known as the Tile Contractors Association (TCA). In 1983, 10 of the 11 tile contractors withdrew their bargaining authority from the TCA, leaving only one employer, Peter Bratti Associates, Inc., as the sole TCA member for the purposes of collective bargaining. Bratti and the Union negotiated a new TCA contract effective from April 1983 to July 1984. Subsequently, the 10 employers who had withdrawn from the TCA, including the charging parties, signed "short form" agreements binding them to the Bratti/TCA contract. The judge found that those short form agreements do not expire until various dates in 1986.

The Board held that the Union had no obligation to bargain with these three employers midterm of its respective contracts. The Board noted that the Employers voluntarily adopted not only the 1983 agreement negotiated by Bratti on behalf of the TCA, but also successor agreements, for a period of 3 years. The Board concluded, "Since we find that the Union had no obligation to negotiate new agreements with the

Charging Parties within the term of its short form contracts, it has committed no violation in refusing to bargain with them."

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Ruhm Tile and Marble Company, Inc., et al.; complaint alleged violation of the Act's Section 8(b)(3). Hearing at San Diego, 30 April and 1 May 1985. Adm. Law Judge James M. Kennedy's decision issued 29 August 1985.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Mode O'Day Co., Division of Wickes Companies, Inc. (Individual), Burbank, Calif. 12 February. 31-CA-15199; JD-(SF)-12-86, Earldean V.S. Robbins, Adm. Law Judge

Retail Delivery Systems, Inc. (Teamsters Local 166), San Bernardino, Calif. 27 February. 31-CA-15059; JD-(SF)-15-86, Roger B. Holmes, Adm. Law Judge

Plumbers Local 246 (Ray M. Marlin, a sole proprietor d/b/a Marlin Mechanical), Visala, Calif. 28 February. 21-CB-9319; JD-(SF)-23-86, William A. Schmidt, Adm. Law Judge

Richmond Toyota, Inc. (Food & Commercial Workers Local 1095), Richmond, Calif. 4 March. 32-CA-7515; JD-(SF)-21-86, Jerrold H. Shapiro, Adm. Law Judge

Humana Hospital-Brandon (Individual), Tampa, Fla. 7 March. 12-CA-11441; JD-(ATL)-12-86, Robert A. Gritta, Adm. Law Judge

Cherokee Marine Terminal, Div. of Cherokee Equity Corp., Inc. (Oil, Chemical and Atomic Workers Local 3-516), Nashville, Tenn. 7 March. 26-CA-11031; JD-39-86, Nancy M. Sherman, Adm. Law Judge

Products Unlimited Corp. (Steelworkers), Sterling, Ill. 7 March. 33-CA-7315, 33-RC-3050; JD-38-86, Marion C. Ladwig, Adm. Law Judge

Service Employees Local 250 (Shoreline South Intermediate Care, Inc., a wholly-owned subsidiary of Inland Pacific Health Care), Alameda, Calif. 7 March. 32-CP-320; JD-(SF)-22-86, David G. Heilbrun, Adm. Law Judge

Setterlin Co. (Bricklayers Local 55, Carpenters Capital District Council, Plasterers Local 536 and Laborers Local 423), Columbus, Ohio. 10 March. 9-CA-20915; JD-56-86, William F. Jacobs, Adm. Law Judge

Carpenters Local 33 (Project Management, Inc.), Boston, Mass. 11 March. 1-CC-2095; JD-62-86, Michael O. Miller, Adm. Law Judge

Riverview Inn (Hotel and Restaurant Employees Local 267 and Individual), Philadelphia, Pa. 11 March. 4-CA-15092; JD-54-86, Elbert D. Gadsden, Adm. Law Judge

Electrical Workers (IUE) Local 441 (Phelps Dodge Copper Products Co., A Div. of Phelps Dodge Industries, Inc.) (Individual), Elizabeth, N.J. 11 March. 22-CB-5331, 5354; JD-(NY)-18-86, Steven B. Fish, Adm. Law Judge

Holiday Pack Foods (Teamsters Local 807), Brooklyn, N.Y. 11 March. 29-CA-10963; JD-(NY)-19-86, Julius Cohn, Adm. Law Judge

Whirlpool Corp. (Machinists Local Lodge 1918), St. Joseph, Mich. 12 March. 7-CA-24007; JD-58-86, Bernard Ries, Adm. Law Judge

Carpenters Local 1931 (Individual), New Orleans, La. 12 March. 15-CB-3107; JD-63-86, Claude R. Wolfe, Adm. Law Judge

Trident Recycling Corp. and Port Distributing Corp. (Ladies' Garment Workers Local 23-25), Long Island City, N.Y. 13 March. 29-CA-11160; JD-(NY)-15-86, Steven Davis, Adm. Law Judge

Unique Knitting, Inc. (Ladies' Garment Workers Local 155), Deer Park, N.Y. 13 March. 29-CA-11722; JD-(NY)-20-86, D. Barry Morris, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Ithacare Center Services Co., Inc. Ithacare, Inc. and Home Health Care, Inc. (3-RC-8853), Ithaca, N.Y. 14 March. Full-time and regular part-time employees including food service employees, personal care attendants, housekeeping and maintenance employees shall vote for representation by Auto Workers Local 2300, or for no representation.

Staub Textile Services, Inc. (3-RC-8858), Rochester, Buffalo and Syracuse, N.Y. 12 March. Full-time and regular part-time industrial and commercial drivers shall vote for representation by the Staub's Service Employees Union; by Teamsters Local 791; or by neither.

Flash Car Wash (13-RC-16833), Melrose Park, Ill. 13 March. Full-time car wash employees shall vote for representation by Teamsters Local 714, or for no representation.

Service & Materials Co., Inc. (25-RC-8277), Elwood, Ind. 12 March. Production and maintenance employees shall vote for representation by the Auto Workers, or for no representation.

National Amusements, Inc.--Redstone Management, Milford Four-Plex Theater (39-RC-585), Milford, Conn. 13 March. Full-time, regular part-time, and relief motion picture projectionists shall vote for representation by Motion Picture Projectionists Protective Union (Independent) Local 273; by Theatrical Stage Employees and Moving Picture Machine Operators Local 273; or by neither.

NATIONAL LABOR RELATIONS BOARD
DIVISION OF INFORMATION
WASHINGTON, DC 20570

17 March 1986

NOTICE OF PUBLICATION

Volume 272 of DECISIONS AND ORDERS OF THE NATIONAL LABOR RELATIONS BOARD has been published by the Superintendent of Documents, U.S. Government Printing Office.

Volume 272, 1397 pages, covers the period 15 Sept. 1984 through 30 Nov. 1984.

The price: $34.00

Orders for Volume 272, Stock No. 031-000-00262-1, should be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Orders must be accompanied by cash, check or money order--unless the purchaser has a Deposit Account Number. Do NOT send orders or payments to the NLRB.

An order form follows:

ORDER FORM To: **Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402**

Enclosed is $ _____ ☐ check,
☐ money order, or charge to my
Deposit Account No.
☐☐☐☐☐☐☐–☐

Order No. _____

Credit Card Orders Only

Total charges $ _____ **Fill in the boxes below.**

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Send _____ copies of Volume 272, Decisions and Orders of the National Labor Relations Board.
Stock No. 031-000-00262-1. Price: $34.00

Company or personal name

Additional address/attention line

Street address

City **State** **ZIP Code**

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2009

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

17 - 21 MARCH 1986

(W-2009)

NEWARK PUBLIC LIBRARY
APR 9 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Barnett Supply Co., Inc.	Summersville, W. Va.	7
Ben Franklin National Bank	Pasco, Wash.	3
Bennington Iron Works	Bennington, Vt.	4
Birney's Restaurant	Port Angeles, Wash.	1
Cape Girardeau Care Center, Inc.	Cape Girardeau, Mo.	8
Highlands Regional Medical Center	Prestonsburg, Ky.	9
Hotel Holiday Inn de Isla Verde	Carolina, P.R.	4
Laborers Local 644 (Kellerman Brothers Construction Co.)	Pinckneyville, Ill.	6
Leeward Nursing Home	Makaha and Oahu, Hawaii	4
NDK Corp.	Chicago, Ill.	5
Newport News Shipbuilding & Dry Dock Co.	Newport News, Va.	2
Painters District Council 36	Los Angeles, Calif.	1

LR1.15/2:

Painters Local 479	Pittsburgh, Pa.	7
Pencò, Inc.	Louisville, Ky.	8
Sahara Datsun, Inc.	Las Vegas, Nev.	6
Telecommunications Local 212 (New York Telephone Co.)	Colonie, Glens Falls, Rome, Schenectady, Syracuse and Utica, N.Y.	2
Zlogar (Walter A.), Inc.	Ottumwa, Iowa	9

OTHER CONTENTS

List of Decisions of Administrative Law Judges 10

List of Directions of Elections by Regional Directors 10

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Birney's Enterprises, Inc. d/b/a Birney's Restaurant (19-CA-17326; 278 NLRB No. 141) Port Angeles, Wash. 17 March. The Board granted the General Counsel's motion for summary judgment and ordered the employer to make whole its bargaining unit employees by payment to them of the respective amounts stated in the backpay specification.

The Regional Director had issued a backpay specification and notice of hearing on 18 December 1985 after a controversy arose over the amount of backpay due under the Board's Order of 6 August 1985, as enforced by the Ninth Circuit, directing reimbursement for losses caused by employer reduction in wage rates without consulting Hotel and Restaurant Employees Local 417.

Since the employer did not file an answer or offer any explanation for its failure to do so, the Board found that the allegations in the backpay allegations are deemed to be admitted as true and therefore granted summary judgment.

(Chairman Dotson and Members Dennis and Johansen participated.)

General Counsel's motion for summary judgment filed 30 January 1986.

* * *

Painters District Council 36 (21-CB-8856, 21-CE-330, 21-CC-2835, 2837; 278 NLRB No. 138) Los Angeles, Calif. 18 March. The Board held that the union unlawfully entered into, maintained, and enforced the "self help" aspects of its Master Labor Agreement with the Southern California Drywall Contractors Association, Inc., insofar as those aspects applied to the secondary contracting restrictions of the contract.

The union unlawfully resorted to self-help measures to enforce the clause in question, the Board found. Specifically, it held, the union violated the Act when it encouraged employees of a neutral company--Gypsum Enterprises--not to work for their employer at a maintenance facility construction site; when Gypsum employees refrained from working at the union's encouragement; and when it made threatening statements to Gypsum employees and to officials of J.A. Stewart Construction Company, the general contractor on the site.

Article 26, section 7 of the MLA provides that, when work on a job commenced by one company is stopped by the union because of the company's failure to meet its contract obligations, the union may refuse to permit persons to work on the job until the wages and benefits owed by the original contractor have been paid. The article also authorizes the union to strike or refuse to supply workers until the contractor or general contractor paid the delinquent wages of a prior contractor.

This article violated the Act insofar as it permitted the union to employ economic self-help to enforce secondary restrictions on replacing contractors, the Board ruled.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by J.A. Stewart Construction Co.; complaint alleged violation of the Act's Section 8(e), 8(b)(4)(i), (ii)(A) and (B), and 8(b)(1)(A). Parties waived hearing before an administrative law judge.

* * *

Newport News Shipbuilding & Dry Dock Company (5-CA-113338, et al.; 278 NLRB No. 150) Newport News, Va. 19 March. The Board directed the Employer to pay David R. Davis and Frances E. Price $46,160.62 and $78,397.88, respectively, for losses they suffered through the employer's unfair labor practices. In a 1982 decision and order (265 NLRB 716), the Board had directed the company to make whole various discriminatees.

The employer contended that Davis was not entitled to backpay for 1979, 1980 or 1982 because, the employer alleged, Davis did not furnish the employer with tax returns or W-2 statements for those years, and therefore did not comply with a settlement agreement between the employer and the Steelworkers over backpay. The administrative law judge rejected the employer's arguments, finding that Davis had provided the relevant forms.

The Board also adopted the judge's finding that Price's backpay should not be reduced because of her discharge for cause from various interim jobs. The Board concluded that the employer did not establish that the conduct for which Price was discharged from interim employment was such willful or gross misconduct to constitute a willful loss of earnings.

(Members Dennis, Johansen and Babson participated.)

Supplemental hearing at Newport News, 22 April 1985. Adm. Law Judge Claude R. Wolfe's supplemental decision issued 24 July.

* * *

Telecommunications Local 212 (New York Telephone Co.) (3-CB-4413, et al.; 278 NLRB No. 144) Colonie, Glens Falls, Rome, Schenectady, Syracuse and Utica, N.Y. 17 March. The Board agreed with an administrative law judge that the union violated the Act by (1) fining 22 individuals who had resigned from union membership, or who were not union members, for crossing a picket line to return to work and (2) maintaining a constitutional provision prohibiting resignation until 30 days subsequent to the union's actual receipt of the resignation.

The judge relied on the Board's decision in Machinists Local Lodge 1414 (Neufeld Porsche-Audi, Inc.), 270 NLRB 209 (1984), that any restrictions on a member's right to resign from a union are unlawful restrictions on an employee's rights.

The Board found merit to the General Counsel's exceptions to to the judge's failure to find that the union violated the Act by fining another employee who resigned from the union. The union had refused to accept the employee's resignation letter.

Dismissed was an allegation that the union unlawfully fined supervisor-members who performed a substantial amount of unit work during the strike.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Kathleen Baron and other Individuals; complaint alleged violation of the Act's Section 8(b)(1)(A) and (B). Hearing 7-10 January 1985. Adm. Law Judge Howard Edelman's decision issued 8 August.

* * *

Ben Franklin National Bank (19-CA-13794, 14386; 278 NLRB No. 136) Pasco, Wash. 17 March. The Board adopted an administrative law judge's finding that the employer violated the Act by refusing to execute a contract incorporating an agreement reached with Food and Commercial Workers Local 1439, and by refusing to provide the union with bargaining unit employee names, addresses, wage rates and classifications.

In its defense, the employer contended that no binding contract was created because the terms of the purported agreement were never ratified by the company's board of directors. The Board, however, agreed with the judge that William Hart, company president and member of its board of directors, obligated the employer to execute a collective-bargaining agreement on the union's acceptance of the complete contract offer communicated by Hart. The letter accompanying the dispatch of the final offer to the union, by wording and content, implied full authority on the part of Hart both to proffer final contract terms and to seek union acceptance of those terms, the judge said.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Food and Commerical Workers Local 1439; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Richland, 5 May 1982. Adm. Law Judge James T. Barker's decision issued 9 August 1982.

* * *

Hotel Holiday Inn de Isla Verde (24-CA-4535, et al.; 278 NLRB No. 147) Carolina, P.R. 19 March. On remand from the U.S. Court of Appeals for the First Circuit, the Board reversed its 1982 decision (265 NLRB 1513) that alleged picket line misconduct of Gloria Andrades and Miguel Montalvo was not serious enough to justify their discharges, that the employer had acted unlawfully in dismissing them, and that they were therefore entitled to unconditional reinstatement, despite a strike settlement restricting their reemployment.

The Board, in reversing its previous holding, concluded that the voluntary settlement agreement should be honored. It noted that at the time the settlement had been entered into, neither employee had any established right to reinstatement, since the right to unconditional reinstatement was contingent upon the Board's ultimately finding Andrades and Montalvo were unlawfully discharged. The complaint was dismissed.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

Leeward Nursing Home (37-CA-1936, 1996; 278 NLRB No. 157) Makaha and Oahu, Hawaii. 20 March. The Board affirmed an administrative law judge's dismissal of allegations that the nursing home operator unlawfully transferred Edna Arzadon, subcontracted housekeeping and dietary work to ARA Services, influenced ARA Services not to hire eight dietary and housekeeping employees, threatened reprisals, created the impression of surveillance of employees' activities for Teamsters Local 996, and discharged an employee.

Other allegations were dismissed on a finding that the allegations were barred by the 6-month filing limitation of Section 10(b) or by a 1982 settlement agreement.

(Chairman Dotson and Member Dennis and Johansen participated.)

Charges filed by Teamsters Local 996; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Honolulu in the weeks of 23 and 30 January and 5 March 1984. Adm. Law Judge Timothy D. Nelson's decision issued 3 August 1984.

* * *

Bennington Iron Works (1-CA-16581(E); 278 NLRB No. 159) Bennington, Vt. 20 March. The Board dismissed an employer application, filed under the Equal Access to Justice Act, for an award of attorney fees and expenses incurred defending against an unfair labor practice charge.

An administrative law judge found that the General Counsel was substantially justified in litigating. The judge noted that he had found, as the General Counsel alleged, that the employer did not have a good-faith doubt of the union's majority status at the time the employer withdrew recognition. In its 1983 decision and order, the Board drew inferences opposite to those of the judge and dismissed the complaint.

The judge also said that the General Counsel's theory of the case was "clear, consistent, and based on long established and clear governing law."

(Members Johansen, Babson and Stephens participated.)

Adm. Law Judge Richard L. Denison's supplemental decision issued 17 January 1984.

* * *

NDK Corporation (13-CA-22550, et al.; 278 NLRB No. 151) Chicago, Ill. 19 March. Agreeing with an administrative law judge, the Board found that the employer unlawfully repudiated its agreement with Food and Commercial Workers Local 1550.

The judge specifically found that the employer refused to process grievances, failed to make contributions to the union's health benefits and pension funds, denied union representatives access to the facility, and refused to make its payroll records available for audit by trustees of the union benefit and pension funds.

The employer argued that its consent to executing the agreement was unlawfully induced by the union's false representations that the contract would not be enforced. The Board, in adopting the judge's finding of violation, relied solely on the rationale of Gatliff Coal Co. v. Cox, 152 F.2d 52 (6th Cir. 1945). The Board said: "National labor policy requires that evidence of oral agreements be unavailing to vary the provisions of a written collective-bargaining agreement valid on its face."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Food and Commercial Workers Local 1550; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Chicago, 11-14 July 1983. Adm. Law Judge Arline Pacht's decision issued 5 March 1984.

* * *

Sahara Datsun, Inc. (31-CA-14493, et al.; 278 NLRB No. 148) Las Vegas, Nev. 20 March. The Board agreed with an administrative law judge that employer unfair labor practices make it unlikely that a fair second election could be held. It thus issued a bargaining order.

The unfair labor practices included discharge of the two principal union adherents; refusal to bargain with The Liberated Workers Welfare; threats of discharge; and unilateral changes in terms and conditions of employment.

One unlawfully discharged employee--Mark Daraka--was found not entitled to reinstatement because he made statements disparaging the employer's reputation. For the same reason, Daraka is not entitled to act as the union's representative, the Board held.

Based on her concurring opinion in Regency Manor Nursing Home, 275 NLRB No. 171 (31 July 1985), Member Dennis found the unfair labor practices sufficiently serious and pervasive to warrant a bargaining order.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by The Liberated Workers Welfare; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Las Vegas, 26-28 February and on dates in March 1985. Adm. Law Judge Gerald A. Wacknov's decision issued 5 August.

* * *

Laborers Local 644 (Kellerman Brothers Construction Company) (14-CB-6261; 278 NLRB No. 162) Pinckneyville, Ill. 21 March. Adopting an administrative law judge's decision, the Board found that the union violated the Act by causing the employer to discharge Joseph H. Baker.

The judge found actions by which the union caused the company to discharge Baker included unlawful picketing at the jobsite and informing the employer that Baker would not be permitted to join the union and that the employer must "forget" Baker. The union also threatened to picket if Baker were not removed from the job, told Baker that he would not be permitted to join the union, and made other threats.

The judge based his findings of violation on credibility determinations.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Joseph H. Baker; complaint alleged violation of the Act's Section 8(b)(1)(A) and (b)(2). Hearing at St. Louis, 23-24 July 1985. Adm. Law Judge Lawrence W. Cullen's decision issued 27 November.

* * *

Barnett Supply Company, Inc. (9-CA-21242; 278 NLRB No. 146) Summersville, W. Va. 17 March. The Board held that the employer violated the Act by failing to remit checked-off dues and strike fund assessments to Mine Workers District from 9 July to 16 July 1984, and by failing to recall bargaining unit employees in accordance with a seniority list.

The company conceded that it was a successor to Ritter-Greene Coal Company, which had an agreement with the union, and was therefore obligated to recognize the union. The company's obligation to honor the checkoff provision from 9-16 July turned on whether Ralph Barnett was the company's agent in its dealings with the union and former Ritter-Greene employees who worked at the mine during that period, an administrative judge said.

The judge found that the company "held out" Barnett as its agent, and that Barnett bound the company to the UMW agreement for that period.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Mine Workers District 31; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Charleston, 4-5 December and at Richwood, 8 January 1985. Adm. Law Judge Leonard M. Wagman's decision issued 5 November.

* * *

Painters Local 479 (6-CD-805; 278 NLRB No. 145) Pittsburgh, Pa. 18 March. The Board concluded that the unrepresented clerical employee in the graphics design department of Giltspur Exhibits/Pittsburgh, a division of Giltspur Expo Industries, Inc., is entitled to operate the Signmaker IV machine which cuts letters out of vinyl and ruby or amber lith at the Giltspur facility in Pittsburgh.

In so holding, the Board decided that Painters Local 479 is not entitled by means proscribed by the Act to force Giltspur Exhibits/Pittsburgh to assign the disputed work to employees represented by it.

In reaching this conclusion, the Board relied on the employer's preference and past practice, area and industry practice, relative skills, and economy and efficiency of operation.

(Members Johansen, Babson and Stephens participated.)

* * *

Cape Girardeau Care Center, Inc. (14-RC-9810; 278 NLRB No. 143) Cape Girardeau, Mo. 18 March. The Board asserted jurisdiction over the employer, rejecting the contention that it is a political subdivision of Cape Girardeau County, Missouri; and then directed the Regional Director to serve on the employer and Teamsters Local 574 a tally of ballots cast in an election on 14 February 1984 and impounded pending Board review of the question of jurisdiction.

The Board found that because a private individual created the employer as a not for profit corporation and sought County approval of the employer's creation simply to obtain tax-exempt bonds to finance the sale of the nursing home, the employer has not shown it is a department or administrative arm of Cape Girardeau County.

The Board also concluded the employer failed to demonstrate that its policy-making officials have "direct personal accountability" to public officials or to the general public.

(Chairman Dotson and Members Dennis and Johansen participated.)

* * *

Penco, Inc. (9-CA-19064(E), 9-RC-14154(E); 278 NLRB No. 158) Louisville, Ky. 21 March. The Board dismissed an employer application, filed under the Equal Access to Justice Act, for an award of attorney's fees and expenses incurred when the company was defending itself against an unfair labor practice charge.

The charge had alleged that the employer unlawfully suspended and terminated George Carter for supporting Ironworkers Local 682. The complaint was dismissed on the basis of credibility resolutions.

In denying the award, an administrative law judge found that the General Counsel was substantially justified in proceeding against the employer. He said that, had he credited Carter, rather than the employer's witnesses, he would have concluded that Carter was denied a raise, suspended, and discharged because of his union activity.

(Chairman Dotson and Members Dennis and Johansen participated.)

Adm. Law Judge Donald R. Holley's supplemental decision issued 28 August 1984.

* * *

Highlands Regional Medical Center (9-CA-17318; 278 NLRB No. 160) Prestonsburg, Ky. 21 March. As did an administrative law judge, the Board dismissed allegations that the employer violated the Act by discharging two non-unit guards for supporting Hospital and Health Care Employees District 1199 WV/KY during a strike.

At the outset of the strike, the guards said they would not perform certain duties, because they did not believe in crossing picket lines. Later they carried out their expressed intention despite threats of discipline. Thus, the Board held that the guards engaged in an unprotected partial strike, and that they were lawfully discharged for failure to perform their job duties.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Hospital and Health Care Employees District 1199 WV/KY; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Prestonsburg, 16 November 1981. Adm. Law Judge William F. Jacobs' decision issued 24 May 1983.

* * *

Walter A. Zlogar, Inc. (18-CA-9214; 278 NLRB No. 149) Ottumwa, Iowa. 21 March. The Board affirmed an administrative law judge's dismissal of allegations that the employer engaged in bad-faith bargaining with the Five River Carpenter District Council and unlawfully reduced the wages of its employees without having reached a bona fide impasse in negotiations with the union.

In concluding that the employer bargained in good faith, the judge relied on the employer's history of observing union contracts, and on the facts that the company president took the lead in arranging negotiating sessions, agreed with various union positions, increased his wage offers, made complete contract proposals, and observed the procedural requirements of good-faith bargaining.

Both parties agreed that impasse had been reached, the judge said. He held that the reduction of wages and other changes in benefits, after impasse, did not violate the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Five River Carpenter District Council; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Ottumwa, 15 August 1985. Adm. Law Judge Howard I. Grossman's decision issued 30 September.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Wells Fargo Armored Service Corp. (International Guards Union Local 66), Denver, Colo. 11 March. 27-CA-9227, 9263; JD-(SF)-19-86, Gerald A. Wacknov, Adm. Law Judge

Operating Engineers Local 501 (Desert Inn Hotel, Country Club and Spa), Las Vegas, Nev. 12 March. 31-CB-6380; JD-(SF)-26-86, Jerrold H. Shapiro, Adm. Law Judge

Lewis Grocer Co. (Individuals), Indianola, Miss. 17 March. 26-CA-11139, et al.; JD-(ATL)-16-86, William N. Cates, Adm. Law Judge

White Oak Coal Co. (Mine Workers), Lebanon, Va. 17 March. 5-CA-16843, et al.; JD-59-86, Thomas A. Ricci, Adm. Law Judge

Mash Transportation, Inc. (Individual), Whiteland, Ind. 17 March. 25-CA-17484; JD-48-86, Phil W. Saunders, Adm. Law Judge

K & M Electronics, Inc. (Teamsters Local 404), Springfield, Mass. 18 March. 1-CA-23014, 23030; JD-64-86, Joel A. Harmatz, Adm. Law Judge

Wayne W. Sell Corp. (Individual), Pittsburgh, Pa. 18 March. 6-CA-17428, et al.; JD-60-86, Burton S. Kolko, Adm. Law Judge

Super One Food #601 (Individual), Alexandria, La. 18 March. 15-CA-9783; JD-(ATL)-19-86, J. Pargen Robertson, Adm. Law Judge

Carpenters Local 2310 (Hazex Construction Co.) (Individual), Providence, Ky. 18 March. 9-CB-6321; JD-65-86, William F. Jacobs, Adm. Law Judge

SMCO, Inc. and its wholly owned subsidiaries RCA Truck Lines and Georgia Southern Transportation, Inc. (Teamsters Local 667), Memphis, Tenn. 19 March. 26-CA-11172; JD-(ATL)-17-86, Lawrence W. Cullen, Adm. Law Judge

Interstate Food Processing Corp. (Machinists Local Lodge 1198, District Lodge 99), Fort Fairfield, Me. 21 March. 1-CA-22743; JD-41-86, Stephen J. Gross, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Watts Trucking of Nebraska (17-RC-9806), Omaha, Neb. 17 March. Full-time and regular part-time drivers, bench drivers, mechanics and mechanics helpers shall vote for representation by Teamsters Local 554, or for no representation.

Wm. A's Cattleman's Restaurant and Wm. A's Restaurant and Lounge (19-RC-11350), Puyallup and Tacoma, Wash. 14 March. Employees shall vote for representation by Hotel and Restaurant Employees Local 8, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2010

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

24 - 28 MARCH 1986

(W-2010)
NEWARK PUBLIC LIBRARY
APR 16 1986
U. S. GOVT. PUBS.
DEPOSITORY 375

CASES SUMMARIZED

Asbestos Workers Local 91	Albany, N.Y.	7
Emeryville Trucking	Pittsburgh, Pa.	1
Fiber Glass Systems, Inc.	San Antonio, Tex.	2
Florida Memorial College	Miami, Fla.	4
Freedom WLNE-TV, Inc.	New Bedford, Mass.	6
Grata Construction Co.	South Ozone Park, N.Y.	1
Hydro Conduit Corp.	Orland, Calif.	1
Hydro Conduit Corp.	Phoenix, Ariz.	3
Mario Saikhon, Inc.	Holtville, Calif.	4
Quaker Rubber Co.	Philadelphia, Pa.	6
Quality C.A.T.V., Inc.	Sheridan, Ind.	5
Teamsters Local 705	Des Plaines, Ill.	5
Woodline Motor Freight, Inc. and Martin Huffmaster, as agent and/or alter ego of Woodline Freight Inc.	Russellville and Springdale, Ark.	3

LR1.15/2:

Yuba Natural Resources, Inc. Marysville, Calif. 6

OTHER CONTENTS

List of Decisions of Administrative Law Judges 8

List of Directions of Elections by Regional Directors 9

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Hydro Conduit Corporation (20-CA-17091; 278 NLRB No. 155) Orland, Calif. 24 March. On motion for summary judgment, the Board found unlawful the employer's refusal to bargain with Teamsters Local 137. The union had been certified the collective-bargaining representative of production and maintenance employees following an election victory.

Summary judgment was granted on a finding that all issues raised were or could have been litigated in the underlying representation proceeding.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 137; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 1 December 1983.

***

Emeryville Trucking (6-CA-14900; 278 NLRB No. 153) Pittsburgh, Pa. 24 March. The Board agreed with an administrative law judge that the employer unlawfully laid off Melvin Packer and 30 other drivers in retaliation for having to pay Packer a grievance award. Emeryville laid off the 31 employees by cancelling the leases on the trucks they drove for Helms Express.

The threshold issue, the judge said, was the relationship between Helms and Emeryville. Emeryville denied that it was Packer's employer, claiming that it was merely Helms' agent in hiring him. The judge found that Emeryville and Helms were joint employers of Packer and the other drivers.

After Packer won a grievance award requiring Emeryville to pay Packer, Emeryville cancelled the leases to Helms of the 30 trucks whose drivers were junior to Packer and then cancelled the lease on the truck that Packer was driving. The employer later offered the 30 junior drivers employment at Team Trucking Inc., a company formed by the owners of Emeryville; Packer was not offered work. The judge ruled that the denial of work to Packer was unlawful.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Melvin Packer, an Individual; complaint alleged violation of the Act's section 8(a)(1) and (3). Hearing in December 1984. Adm. Law Judge Burton S. Kolko's decision issued 25 June 1985.

***

Grata Construction Company (29-CA-11803; 278 NLRB No. 161) South Ozone Park, N.Y. 25 March. The Board held that the employer violated the Act by refusing to pay Vernon Richards the union wage rate and provide him various union benefits,

because Richards was not a union member in good standing.

The employer also violated the Act by threatening employees with discharge because they requested the union wage rate, the Board found.

Summary judgment was granted on employer failure to file an answer to the complaint.

(Chairman Dotson and Member Dennis and Johansen participated.)

Charges filed by Vernon Richards, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). General Counsel's motion for summary judgment filed 24 September 1985.

***

Fiber Glass Systems, Inc. (23-CA-8870, et al.; 278 NLRB No. 154) San Antonio, Tex. 25 March. Contrary to an administrative law judge, the Board found that employer unfair labor practices, which included an unlawful discharge, were not so substantial to warrant a bargaining order. It concluded, however, that employer misconduct impermissibly interfered with an election held 8 April 1982. It set aside that election and directed a second one.

The judge found that the employer unlawfully discharged Raul Portales because of his organizing activities for the Electrical Workers (IUE), but that Portales was not entitled to reinstatement or backpay because he lied on his employment application. The Board held that Portales was entitled to backpay from his December 1981 discharge until April 1982, when Portales pointed a pistol at an employee and threatened to kill him.

Reversing the judge on four findings of unlawful impressions of surveillance, the Board said that supervisors merely were communicating to employees that they had observed certain conduct and associations occurring openly at the workplace. There was no implication of unlawful surveillance, the Board said.

The union's organizing campaign was marked by unlawful employer threats and interrogations, the judge found.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Electrical Workers (IUE); complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing 8 April 1982. Adm. Law Judge Phil W. Saunders' decision issued 15 June 1983.

***

Hydro Conduit Corporation (28-CA-6860; 278 NLRB No. 164) Phoenix, Ariz. 24 March. Contrary to an administrative law judge, the Board found that the employer unlawfully refused to bargain with Laborers Local 383.

After the contract between the parties expired and before the union filed charges alleging unlawful refusal to bargain, the employer filed a petition for a representation election. The judge concluded that he was foreclosed from finding a violation of the Act in view of an unappealable decision of a Regional Director that a question of representation existed.

The administrative determination that objective considerations support an employer-filed petition is not determinative of an employer's obligation to bargain, the Board noted. It thus held that the Regional Director's decision did not preclude litigation of the related unfair labor practice charge.

Although deciding he was precluded from finding a violation of the Act, the judge proceeded to make findings and conclusions of law. The Board agreed that the employer failed to rebut the presumption of the union's continued majority status and that the employer violated the Act by refusing to bargain.

Dismissed was an allegation that the employer unlawfully refused to sign an agreed-upon contract.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Laborers Local 383; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Phoenix, 7 and 13-14 June 1983. Adm. Law Judge Richard D. Taplitz' decision issued 29 December 1983.

***

Woodline Motor Freight, Inc. and Martin Huffmaster, as agent and/or alter ego of Woodline Freight Inc. (26-CA-8570, et al.; 278 NLRB No. 152) Russellville and Springdale, Ark. 25 March. The Board agreed with an administrative law judge's findings that the employer committed numerous unfair labor practices at its Springdale and Russellville terminals during a 1980-1981 organizing effort by Teamsters Locals 878 and 823.

Union animus was the reason Woodline laid off 11 Springdale employees and converted the terminal to a lease operation, the judge held. He also found that Martin Huffmaster operated the Sprindale terminal as a disguised continuance of Woodline. The Board thus concluded that Huffman was an alter ego of Woodline, and it ordered Woodline and Huffman, jointly, to make whole the employees who were discriminatorily laid off.

The Board found that Paul Hickman was not discharged because of his union activities. It concluded, however, that Hickman's protected concerted activity of acting as spokesman for other employees to request air conditioners for trucks was the reason for his discharge. The Board thus held that Hickman's discharge violated Section 8(a)(1) of the Act.

The employer was ordered to redomicile line haul tractors back to its Russellville terminal on a finding that Woodline discriminatorily laid off Russellville drivers and domiciled the tractors at other terminals.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Paul Rickman, an Individual and Teamsters Locals 878 and 823; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Russellville on dates in April, July, August, November and December 1981 and at Little Rock in September 1981. Adm. Law Judge Robert G. Romano's decision issued 13 March 1980.

***

Florida Memorial College (12-CA-9209; 278 NLRB No. 163) Miami, Fla. 27 March Granting summary judgment, the Board found unlawful the employer's refusal to bargain with Teachers Local 1880, the certified collective-bargaining representative of the college's full-time faculty members, professional librarians, and professional counselors.

The Board found that the Employer raised no issues which were not, or could not have been, litigated in the underlying representation proceeding.

(Members Dennis, Johansen, and Babson participated.)

Charges filed by Teachers Local 1880; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 16 February 1983.

***

Mario Saikhon, Inc. (21-RM-2274, 2276; 278 NLRB No. 166) Holtville, Calif. 27 March. The Board held that workers who operate broccoli and canteloupe packing machinery in the fields are not "agricultural laborers" excluded from the coverage of the Act.

An Acting Regional Director had found that the employees at issue were agricultural laborers because they were engaged in "harvesting." The Board ruled, however, that the definition of "harvesting" could not be stretched to encompass the packing operation when it was performed in the field, because moving it to the field from the packing shed did not change the nature of the work.

The Board thus reinstated representation petitions filed by the employer when both Food and Commercial Workers Local P--78--B and the Farm Workers sought recognition as representative of the employees who operate the field packing machines. The Acting Regional Director had dismissed the petitions on his finding that the workers were excluded from coverage under the Act.

(Chairman Dotson and Members Dennis and Stephens participated.)

Quality C.A.T.V., Inc. (25-CA-14714; 278 NLRB No. 156) Sheridan, Ind. 27 March. Reversing an administrative law judge's finding, Members Dennis and Johansen held that the employer unlawfully discharged Charles H. Boyle and Jerry Reners for their protected concerted activity of refusing to climb utility poles while wet. Dissenting, Chairman Dotson would find that the concerted protest was not focused on working conditions but was the product of personal friction between the two employees and their supervisors. He would dismiss the complaint.

The two linemen refused to climb utility poles because they were still wet from walking in a heavy rain from a jobsite to a restaurant where the rest of the crew was waiting with the company truck. The panel majority pointed out that the concerted refusal to work was to protest an employment condition--the requirement to climb poles while wet. Members Dennis and Johansen said: "Protest over this employment condition was protected whether Boyle and Reners acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude."

Dismissed was an allegation that company agents assaulted Reners because he was the subject of charges filed with the Board.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Individuals; complaint alleged violation of the Act's Section 8(a)(1) and (4). Adm. Law Judge Stephen J. Gross' decision issued 3 March 1983.

***

Teamsters Local 705 (13-CC-1433, 1438; 278 NLRB No. 168) Des Plaines, Ill. 27 March. The Board agreed with an administrative law judge that the union violated the Act by threatening to strike and striking Emery Air Freight Corporation to force Emery to cease business with DPD, a subsidiary of Ryder Trucks, to which Emery subcontracted drayage operations.

Contrary to the judge, the Board found that the union further violated the Act by filing a grievance against Emery, alleging that Emery violated its contract with Local 705 "by contracting out drivers' work to a company which is not paying those employees area benefits and wages which are received by drivers under the agreement."

The Board concluded that union threats to strike Emery over subcontracting drayage work to a company not under contract with Local 705 or with the Chicago Truck Drivers, Helpers, and Warehouse Workers Union, which had an agreement with the previous subcontractor, had an unlawful secondary objective. The grievance was but a further attempt to force Emery to cease business with DPD, it held.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Emery Air Freight Corporation; complaint alleged violation of the Act's Section 8(b)(4)(ii)(B). Hearing at Chicago, 25-26 February 1985. Adm. Law Judge Walter H. Maloney, Jr.'s decision issued 9 May.

***

Quaker Rubber Company (4-CA-15167; 279 NLRB No. 3) Philadelphia, Pa. 28 March. The Board held that the employer unlawfully interfered with employees' rights during a 1985 strike by driving a car towards striking employees and union representatives and stopping just short of hitting them, attempting to force employees' cars off the road and actually sideswiping a union picket's car, and brandishing an iron pipe at striking employees.

Summary judgment was granted on employer failure to file an answer to the complaint.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 115; complaint alleged violation of the Act's Section 8(a)(1). General Counsel's motion for summary judgment filed 16 January 1986.

***

Yuba Natural Resources, Inc. (20-CA-19975; 279 NLRB No. 1) Marysville, Calif. 28 March. Granting summary judgment, the Board found unlawful the employer's refusal to bargain with Operating Engineers Local 3. the certified collective-bargaining representative of the company's production and maintenance employees.

The Board found that all issues raised were or could have been raised in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Operating Engineers Local 3; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 23 December 1985.

***

Freedom WLNE-TV, Inc. (1-CA-21730; 278 NLRB No. 167) New Bedford, Mass. 26 March. The Board agreed with an administrative law judge that the employer violated the Act by conditioning its 1983 profit sharing payments and Christmas bonus benefits upon contract ratification, and by withholding the profit sharing payment until ratification of a labor agreement with Electrical Workers (IBEW) Local 1228.

The Board also agreed with the judge that the employer illegally conditioned further movement in negotiations upon the union's conducting a ratification vote.

The judge noted the employer intended to use its actions as "leverage" in negotiating, referring to language it used in an ostensible report on negotiations which told employees "that receipt of those benefits relates to contract ratification."

Because ratification is a non-mandatory bargaining subject, to withhold the benefits in this case constituted a violation, the judge wrote. He also said that the employer "exceeded the bounds of good faith bargaining by refusing to make new offers until the Union conducted a ratification vote."

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Electrical Workers (IBEW) Local 1228; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Boston, 16-18 October 1984. Adm. Law Judge Norman Zankel's decision issued 16 April 1985.

***

Asbestos Workers Local 91 (3-CD-569; 278 NLRB No. 165) Albany, N.Y. 24 March. The Board concluded that unrepresented employees of Northern Tier Insulation, Inc. (NTI) were entitled to install insulation for (1) hot water heating systems at the Greercrest Retirement Community project at Millpond, N.Y. and (2) underground steam and condensate piping at Vassar College in Poughkeepsie, N.Y.

NTI employees had initially been assigned to perform the work in dispute after NTI successfully bid on a project initiated by C.B. Strain & Son, Inc. However, after Asbestos Workers Local 91 claimed this work for its employees and threatened to picket Strain if it were not granted the work, Strain canceled its agreements with NTI and contracted the work to Orange County Insulation Corporation, whose insulation employees are represented by Local 91.

In granting the work to NTI's unrepresented employees, the Board relied on the factor of efficiency and economy, noting that NTI's employees were cross-trained and could therefore be cross-utilized.

Local 91 is not entitled by proscribed means to force Strain to reassign the disputed work, the Board held.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Plumbers Local 447 (NPS Energy Services, Inc.) (Individuals), Sacramento, Calif. 17 March. 20-CB-6627, 6644; JD-(SF)-27-86, Burton Litvack, Adm. Law Judge

Asociacion Hospital Del Maestro, Inc. (Confederacion Obrera Puertorriquena), Hato Rey and San Juan, P.R. 21 March. 24-CA-5293; JD-68-86, Robert W. Leiner, Adm. Law Judge

Mashkin Freight Lines, Inc. and Bari Leasing, Inc. (Individuals and Teamsters Local 559), New York, N.Y. 21 March. 39-CA-76, et al.; JD-(NY)-22-86, Eleanor MacDonald, Adm. Law Judge

Longshoremen's Association (Marine Transport Lines Co., Inc., Keystone Shipping Co., Maritime Overseas Corp. and Moore McCormack Bulk Transport, Inc.), Secaucus, N.J., Philadelphia, Pa., New York, N.Y. and Stamford, Conn. 21 March. 5-CB-4870, et al.; JD-61-86, Benjamin Schlesinger, Adm. Law Judge

Pilgrim Industries, Inc. (Food and Commercial Workers Local 540), Lufkin, Tex. 24 March. 16-CA-12241; JD-(ATL)-13-86, Richard J. Linton, Adm. Law Judge

H & A Trading, Inc. (Teamsters Local 901), Hato Rey, P.R. 24 March. 24-CA-5154; JD-51-86, John H. West, Adm. Law Judge

Teamsters Local 59 (New Bedford Seafood Cooperative Association, Inc., Fuel Division) (Individuals), Boston, Mass. 24 March. 1-CB-6171; JD-66-86, David L. Evans, Adm. Law Judge

General Fire Extinguisher Corp. (Clothing and Textile Workers, Chicago and Central States Joint Board), Northbrook, Ill. 25 March. 13-CA-24977; JD-73-86, Thomas R. Wilks, Adm. Law Judge

Champion Finishing Co., Inc. (Individual), Asheville, N.C. 26 March. 11-CA-11736; JD-(ATL)-23-86, Philip P. McLeod, Adm. Law Judge

Laborers Local 308 (Individual), Philadelphia, Pa. 26 March. 4-CB-5031(P); JD-70-86, Irwin Kaplan, Adm. Law Judge

Sonat Marine, Inc., Interstate Oil Transport Co., Mariner Towing Co., IBC Co. (Marine Engineers Beneficial Association, Associated Maritime Officers, District 2), Philadelphia, Pa. 26 March. 4-CA-14832, 15026; JD-69-86, Claude R. Wolfe, Adm. Law Judge

M.L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers (Ironworkers Local 16), Baltimore, Md. 27 March. 5-CA-17422; JD-74-86, Robert W. Leiner, Adm. Law Judge

Davis Acoustical Co., Inc. (Carpenters Local 43), Hartford, Conn. 27 March. 39-CA-2721; JD-76-86, John H. West, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Unicell Body Co., Inc. (3-RD-893), Rochester, N.Y. 20 March. Truck equipment installation and truck repair employees shall vote for representation by Machinists Local Lodges 1053 and 93, jointly, or for no representation.

N & T Express, Inc. (3-RC-8863), Cobleskill, N.Y. 21 March. Full-time and regular part-time truck drivers, dockpersons and mechanics shall vote for representation by Teamsters Local 294, or for no representation.

Post Tribune Publishing, Inc. (13-RD-1671, 13-RM-1433), Gary, Ind. 20 March. Full-time and regular part-time advertising department employees shall vote for representation by The Gary Newspaper Guild Local 14, or for no representation.

Puerto Rico Cryogenics Corp. (24-RC-7040), Cantano, P.R. 20 March. Salesmen and/or collectors, office clerical employees, and distribution clerks shall vote for representation by Union de Tronquistas de Puerto Rico Local 901, or for no representation.

Osco Drugs, Inc. (31-RC-6002), Clark County, Nev. 20 March. Full-time and regular part-time registered staff pharmacists shall vote for representation by the Guild for Professional Pharmacists, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2011

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

31 MARCH - 4 APRIL 1986 (W-2011)

NEWARK PUBLIC LIBRARY

APR 25

U.S. GOVERNMENT DEPOSITORY

CASES SUMMARIZED

Central Washington Hospital	Wenatchee, Wash.	9
Dandridge Textile, Inc., Ronald W. Woods, Individually and as officer and managing agent	Dandridge, Tenn.	5
Eskaton Sunrise Community	Citrus Heights, Calif.	4
Farm Boy Restaurant, et al.	Santa Maria, Arroyo Grande, Pismo Beach and San Luis Obispo, Calif.	1
Food and Commercial Workers Local 274	Monterey Park, Calif.	12
Heuer International Trucks, Inc.	Kennesaw, Ga.	11
Hilton Inn North	Columbus, Ohio	3
Niagara Falls Sightseeing by Sheridan, Inc.	North Tonawanda, N.Y.	1
Niagara Fiberglass, Inc.	Buffalo, N.Y.	10
Painters Local 558	Overland Park, Kans.	7
Perth Amboy General Hospital and Old Bridge Regional Hospital	Perth Amboy and Old Bridge, N.J.	2

READEX FICHE best copy available

LR 1.15/2:

Rebel Coal Co., Inc. and Richlands Supply Corp.	Cedar Bluff, Va.	6
Saint Jean Des Pres Restaurant	New York, N.Y.	4
Service Employees Local 87	San Francisco, Calif.	7
Sonat Marine, Inc.	Philadelphia, Pa.	2
Super Valu Stores, Inc.	Omaha, Neb.	10
Taylor Hospital	Ridley Park, Pa.	9
Trade Names, Inc., A Div. of Lasalle-Deitch Co., Inc.	Elkhart, Ind.	11
Trustees of Columbia University in the City of New York	New York, N.Y.	8
Turner Beverage Co., Inc.	Huntsville, Ala.	3
U.S. Postal Service	Seattle, Wash.	3
U.S. Steel Corp.	Pittsburgh, Calif.	6

OTHER CONTENTS

List of Decisions of Administrative Law Judges 13

List of Directions of Elections by Regional Directors 14

Notice of Publication: Vol. 33 of Court Decisions Relating to the National Labor Relations Act

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Niagara Falls Sightseeing by Sheridan, Inc. (3-CA-10597; 279 NLRB No. 7) North Tonawanda, N. Y. 31 March. The Board ordered the employer to pay Michael Pinkowski $5020.68 for losses suffered when the employer unlawfully discharged him. In a 1982 unpublished order, the Board had directed the Employer to offer reinstatement to Pinkowski and to make him whole.

One issue raised was whether the seasonal employee, discharged on 21 July 1981, was entitled to backpay for seasons beyond 1982 (no net backpay was requested for summer 1982). The employer did not show that Pinkowski would not have sought reemployment and been reemployed each summer after 1981, at least until Pinkowski graduated from college, the judge said. He held that Pinkowski was entitled to backpay for the 1983 and 1984 summer seasons.

The judge rejected employer claims that it made valid offers of reinstatement to Pinkowski.

(Members Dennis, Babson and Stephens participated.)

Supplemental hearing 17 and 18 June 1985 at Buffalo. Adm. Law Judge Michael O. Miller's decision issued 6 November.

***

Merrill M. Williams; Boy's Restaurant, Inc; Girl's Restaurant; Farm Boy Restaurant; Farm Boy Restaurants Nos. 2 and 3 ((31-CA-10172; 279 NLRB No. 13) Santa Maria, Arroyo Grande, Pismo Beach, and San Luis Obispo, Calif. 31 March. The Board held that employer repudiation of tentative agreements reached during collective-bargaining with Hotel and Restaurant Employees Local 703 did not constitute bad-faith bargaining. It reversed a 1982 decision (265 NLRB 506) that the employer violated the Act by repudiating agreements on meal credits and cost-of-living increases.

The company's negotiator made an offer to the union, believing he had the authority to do so. When it became clear that the employer would not approve the proposals, the negotiator immediately withdrew from the agreements, offering a reason for doing so and offering to immediately resume bargaining. The Board found no indication that the employer withdrew from the agreements in order to frustrate the bargaining process or to avoid reaching a contract. It accordingly overrruled its 1982 decision and order and dismissed the complaint.

(Chairman Dotson and Members Dennis and Stephens participated.)

***

Sonat Marine, Inc. (4-CA-14650; 279 NLRB No. 16) Philadelphia, Pa. 31 March. Reversing an administrative law judge's decision, the Board found that the employer unlawfully refused to furnish the Seafarers with information concerning its position that tugboat captains, mates, and barge captains, historically included in the bargaining unit, are supervisors.

The Board found that in response to a union request for the factual basis of its decision, the employer revealed only that its attorneys had reached the conclusion based on review of applicable Board and court precedent. It further held that a letter in which the employer offered to set up a meeting to discuss "the legal basis for Sonat's supervisory decision" did not constitute an offer to provide the requested information. It said that there was nothing in the letter which suggested that the employer was intending to explain the factual basis for its decision.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by the Seafarers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 29-30 April and 1 May 1985 at Philadelphia. Adm. Law Judge James L. Rose's decision issued 23 August.

***

Perth Amboy General Hospital and Old Bridge Regional Hospital (22-CA-13612, 22-RC-9300, 9301; 279 NLRB No. 10) Perth Amboy and Old Bridge, N.J. 31 March. As did an administrative law judge, the Board found that the employer unlawfully restricted distribution of union literature during a 1984 organizing campaign, and threatened and warned employees about supporting Auto Workers District 65.

The company president also violated the Act by calling a union activist an "agitator" and "troublemaker" in the presence of other employees, the Board held. It noted that the president's comment equated union activity with causing trouble and indicated that employees who engage in union activities are out of favor with the company.

Objections to representation elections held 5-6 December 1984 in two bargaining units were overruled. The Board certified that the union did not receive a majority of the valid ballots cast by either the professional or non-professional employees.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Auto Workers District 65; complaint alleged violation of the Act's Section 8(a)(1). Adm. Law Judge James F. Morton's decision issued 12 September 1985.

***

United States Postal Service (19-CA-17268(P); 279 NLRB No. 8) Seattle, Wash. 31 March. The Board held that the employer violated the Act by refusing to honor Thomas Dalton's revocation of his dues checkoff-authorization when Dalton resigned his membership in the American Postal Workers Union.

The authorization executed by Dalton provided for the payment of dues as a quid pro quo for union membership, the Board said. It held that when Dalton validly resigned his union membership, the financial obligation underlying the execution of the authorization--the agreement to have membership dues assigned to the union--ceased to exist for the purpose of dues checkoff.

The Board emphasized that it was not holding that under the Act and the Postal Reorganization Act all dues checkoff authorizations are "revocable at will" upon effective resignation from union membership. It said: "We hold only that those dues-checkoff authorizations linking payment of dues to union membership, as here, are revocable when that link, i.e., union membership, ceases to exist by virtue of an effective resignation from membership."

(Chairman Dotson and Members Johansen and Stephens participated,)

Charges filed by Thomas M. Dalton; complaint alleged violation of the Act's Section 8(a)(1) and (2). Parties waived hearing before an adm.law judge.

***

Hilton Inn North (9-CA-22121; 279 NLRB No. 9) Columbus, Ohio. 31 March. The Board affirmed an administrative law judge's decision that the employer unlawfully refused to execute an agreement reached with Hotel and Restuarant Employees Local 70.

Negotiations began in the spring of 1983, after the union was certified as the representative of a unit of employees. The judge found that since at least September of 1984, and arguably before, the employer played a "cat and mouse" game with the union, imposing new obstacles each time final agreement seemed close. Final agreement was reached on 2 May 1985, the union demanded that the employer put it in writing and execute it, and the employer was obligated to do so, the judge ruled.

(Members Johansen, Babson, and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 70; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Columbus, 3 October 1985. Adm. Law Judge Michael O. Miller's decision issued 20 December.

***

Turner Beverage Company, Inc. (10-CA-20999, 21123; 279 NLRB No. 24) Huntsville, Ala. 31 March. The Board agreed with a administrative law judge that the beer distributor did not discharge Joe and Mary Branum because of their union

or other protected concerted activity.

The judge found that Joe Branum was not discharged because he spoke at various times to fellow employees about the possibility of union representation. Rather, he concluded, Joe and Mary Branum were discharged because the employer suspected they made anonymous telephone calls to Anheuser-Busch, Inc. which put the employer in jeopardy of losing its franchise arrangement with that company. The anonymous calls were not protected concerted activity, the judge further ruled.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Individuals; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Huntsville, 3-4 October 1985. Adm. Law Judge Philip P. McLeod's decision issued 24 December.

***

Eskaton Sunrise Community (20-CA-18633, 20-RC-15691; 279 NLRB No. 12) Citrus Heights, Calif. 31 March. The Board agreed with an administrative law judge that the employer committed numerous violations of the Act after Service Employees Local 22 filed a representation petition, during the critical preelection period, and after the election was held.

Five union supporters were unlawfully transferred to another of the company's nursing homes to "demolish" the union's organizational campaign and to punish the affected employees for their protected concerted activities, the judge held. He additionally found that the employer refused to rehire two of the employees and discriminated in shift assignments.

The employer responded to the union's campaign by unlawfully theatening loss of employment, engaging in surveillance, and interrogating employees, the judge said.

The employer's conduct was found to have interfered with an election held 12 January 1984. The Board set aside that election and directed a second one.

(Chairman Dotson and Members Dennis and Johansen participated)

Charges filed by Service Employees Local 22; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Sacramento, 8-9 May 1985. Adm. Law Judge Michael D. Stevenson's decision issued 15 July.

***

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant (2-CA-20611, 20663, 2-RC-19802; 279 NLRB No. 17) New York, N.Y. 31 March. The Board adopted an administrative law judge's decision that the employer violated the Act

by discharging a union adherent and by requiring its employees to work at least one lunch shift per week, in retaliation for their activities during an Hotel Employees and Restaurant Employees Local 100 organizing campaign.

In addition, the employer unlawfully reduced employees' benefits by denying them free beer and wine with their lunches, the judge found.

Concerning the requirement that waiters work at least one lunch per week, the judge said: "the timing of the announcement, coming only 1 day after the election and accompanied by the statement that the change will be effective 'whether the union people like it or not' provides strong evidence that the change was unlawfully motivated."

The judge remanded the representation proceeding to the Regional Director to open and count two ballots to which challenges were overruled. If a revised tally of ballots shows that the union did not receive a majority, the 12 September 1984 election will be set aside and a new one conducted.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Hotel Employees and Restaurant Employees Local 100; complaint alleged violation of the Act's Section 8(1) and (3). Hearing on five days in February 1985. Adm. Law Judge Steven Davis' decision issued 22 October.

***

Dandridge Textile, Inc., Ronald W. Woods, Individually and as officer and managing agent (10-CA-20936; 279 NLRB No. 15) Dandridge, Tenn. 31 Mar. The employer unlawfully discharged Lorene C. Woods and Mary A. Strange for their involvement in union and other protected concerted activities, the Board found in agreement with an administrative law judge.

The judge found that Woods' and Stranges' union activity, the employer's knowledge of that activity, the company's union animus as reflected in its unlawful questioning of employees and surveillance of a union meeting, the good work records of the two employees and the timing of the discharges established a prima facie showing of violation. He concluded that the two employees were discharged for their union activities and not for "bad attitudes," as the employer had contended.

The employer also violated the Act by soliciting employee grievances and announcing a wage increase.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Ladies Garment Workers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Dandridge, 23-24 July 1985.

Adm. Law Judge Hutton S. Brandon's decision issued 3 September.

***

United States Steel Corporation (32-CA-4835; 279 NLRB No 4) Pittsburgh, Calif. 3 March. Members Dennis and Babson agreed with an administrative law judge that the employer unlawfully rejected William Van Swenson's request for transfer because of his activities as a union grievance chairman. Dissenting, Chairman Dotson would find the evidence insufficient to support a conclusion that Swenson's union activity was the reason for the employer's action.

The judge found that in refusing to consider Swenson for transfer, the employer referred to Swenson as a "troublemaker." He concluded, and the panel majority agreed, that "troublemaker" connoted union activity. Members Dennis and Johansen noted that it is the context in which the word "troublemaker' is used and not the use of the word alone that imparts an unlawful connotation; here, they said, the use of the word was in reference to Swenson's grievance filing activities.

Chairman Dotson would find that the reference to Swenson as a "troublemaker" was not necessarily a reference to his union or protected concerted activities.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by William Van Swenson, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Oakland, 28 April 1983. Adm. Law Judge Gerald A. Wacknov's decision issued 19 July 1983.

***

Rebel Coal Company, Inc. and Richlands Supply Corp. (9-CA-20697; 279 NLRB No. 22) Cedar Bluff, Va. 31 March. Adopting an administrative law judge's decision, the Board held that the single employer violated the Act by refusing to employ three individuals because they joined Mine Workers District 30.

The threshold question was whether Richlands Supply Corp. was the alter ego or the disguised continuance of Rebel Coal Co., Inc., so that they might be considered a single employer.

The judge said: "All of the circumstances brought out in this proceeding establish beyond any question that Richlands Supply was never anything more than an empty shell of a corporation, created by, absolutely controlled by, and, in due time, effectively terminated by A. Odell Rogers." He found that the sole purpose that Rogers, Rebel's only stockholder, created Richlands

was for it to serve as a disguised continuance of Rebel Coal Co.'s parts operation.

The Board thus ordered Rebel and Richlands to make whole Donnie Butcher, Bill McIntyre, and Jimmy Blanton and to offer them reinstatement to their former jobs with Rebel or to substantially equivalent employment.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Mine Workers District 30; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Paintsville, 8-9 October 1985. Adm. Law Judge William A. Pope II's decision issued 31 December.

***

Service Employees Local 87 (20-CC-2565, 20-CP-5859, 20-CP-831; 279 NLRB No. 25) San Francisco, Calif. 31 March. The Board held that the union violated the Act by picketing all entrances to Pacific Telephone and Telegraph Company's Third Street facility, using picket signs which failed to identify the particular employer with whom the union had a dispute.

Pacific Bell had established a reserved entrance for use by employees and suppliers of Stay-King Maintenance Company, the primary employer.

The administrative law judge found that the union's actions were "indicia not only that Respondent failed to meet its obligation to avoid enmeshing Complainant in its dispute with the primary employer, but that Respondent's true motive was to blur the line between pressure brought against the primary employer and effects of that pressure on Complainant." The union's motive, the judge found, was to dissuade Pacific Bell from contracting with Stay-King: a purpose which, he pointed out, is proscribed by the Act.

The union also violated the Act when its members threatened employees of Stay-King, the judge found.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Pacific Telephone and Telegraph Company and Stay-King Maintenance Company; complaint alleged violation of the Act's Section 8(b)(1)(A), (b)(4)(B), and (b)(7)(C). Hearing at San Francisco in June and July 1984. Adm. Law Judge Maurice M. Miller's decision issued 1 March 1985.

***

Painters Local 558 (17-CB-3027, et al.; 279 NLRB No. 23) Overland Park, Kans. The Board agreed with an administrative law judge that the union unlawfully

caused Forman-Ford and Company of Iowa to deny Saturday overtime work to Walter Westfall because he was not a union member, and attempted to cause the employer to terminate Bruce Raney if he did not pay an insurance premium.

When Raney moved to Kansas City from Miami, Florida, Local 558 told Raney that no transfer of membership into that Local would be permitted because Local 559 was striking a company in that area. The judge found that when Raney attempted to secure membership, the Union unlawfully threatened Raney with trouble and loss of employment if he did not give up his efforts, told him he could not work unless he paid an insurance premium, and then threatened loss of employment over Raney's having filed charges with the Board.

Contrary to the judge, the Board found that a statement by a member of the union's executive board constituted an unlawful threat of reprisal through violence. The message conveyed was that creating problems for the union--by filing charges with the Board--would result in unpleasant consequences for employees and their friends, the Board said.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Bruce Raney, an Individual; complaint alleged violation of the Act's Section 8(b)(1)(A) and (2). Hearing at Kansas City, 29-30 July 1985. Adm. Law Judge Claude R. Wolfe's decision issued 18 October.

***

The Trustees of Columbia University in the City of New York (2-CA-18364; 279 NLRB No. 19) New York, N.Y. 31 March. Contrary to an administrative law judge, the Board found appropriate deferral to an arbitrator's award. It dismissed an allegation that the employer violated the Act by discontinuing a tuition exemption benefit without bargaining with Service Employes Local 32B--32J, as well as a related allegation that withdrawal of the benefit was in retaliation for the union's successful attempt to enforce, through arbitration, certain provisions of the collective-bargaining agreement.

The arbitrator found that the employer did not violate the contract and was not required to maintain the benefit.

In rejecting deferral, the judge concluded that the arbitrator decided only that the employer did not breach the contract, and did not consider whether the employer breached its duty to bargain. The Board, however, found that the arbitrator effectively resolved the breach of bargaining duty issue as well as the breach of contract issue.

Since it concluded that the arbitration award met the Spielberg (112 NLRB 1080 (1955)) and Olin (268 NLRB 573 (1984)) standards for deferral, the Board dismissed the complaint.

(Chairman Dotson and Members Hunter and Dennis participated.)

Charges filed by Service Employees Local 32B--32J; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at New York, 8 Aug. 1983. Adm Law judge Raymond P. Green's decision issued 31 October 1983.

***

Taylor Hospital (4-CA-13614; 279 NLRB No. 6) Ridley Park, Penna. 31 March. In agreement with an administrative law judge, the Board found the employer violated the Act by withdrawing recognition from Laborers Local 1319 in the context of its unremedied unlawful discharge of Leola Brown. The Board stated: "We find it difficult to imagine a stronger statement of the futility of collective bargaining than the message conveyed by the Respondent's conduct during its 12-year history with the union."

The employer had litigated the union's 1974 certification in state and federal court, culminating in an order to bargain in 1981. Brown, a leading union supporter since 1973, was selected to be the employee representative on the union bargaining team, but was suspended and later discharged on the second day of negotiations. In an earlier decision the Board held the discharge was motivated by her union activities and the employer's desire to remove her from the bargaining team, thus violating the Act.

The Board found that the discharge of a long-time leading union supporter and member of the union's bargaining team at the outset of long-delayed contract negotiations "was a most serious unfair labor practice" which remained unremedied, and therefore the employer was precluded from effectively relying on its asserted doubt of the union's majority status.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Laborers Local 1319; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Philadelphia, 17 December 1984 and 25-26 February 1985. Adm. Law Judge James J. O'Meara Jr.'s decision issued 16 July.

* * *

Central Washington Health Services Association d/b/a Central Washington Hospital (19-CA-13776; 279 NLRB No. 11) Wenatchee, Wash. 31 March. The Board affirmed an administrative law judge's finding that the employer violated the Act by withdrawing recognition from and refusing to bargain with Food and Commercial Workers Local 900.

The judge found that the employer did not establish that the union in fact lost majority support or that the employer had a reasonably grounded good-faith doubt based on objective considerations that the union lost majority support. Moreover, he concluded the claimed employer good-faith doubt was not raised in a context free of unfair labor practices.

Other violations occurred when the employer promised benefits if employees rejected the union, interrogated employees concerning union sympathies, and instigated, assisted and encouraged the circulation of a decertification petition, the judge held.

(Members Dennis, Johansen and Stephens participated.)

Charges filed by Food and Commercial Workers Local 900; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Wenatchee, 20 May 1982. Adm. Law Judge Richard D. Taplitz's decision issued 28 October 1982.

* * *

Super Valu Stores, Inc. (17-CA-12329,12342; 279 NLRB No. 5) Omaha, Neb. 31 March. The Board affirmed the administrative law judge's conclusion that the employer violated the Act by refusing to furnish Teamsters Local 554 information regarding its 1982 and 1984 purchase and/or sale of a wholesale grocery distribution center in Omaha, after finding the information would shed light on the question of whether and to what extent the employer and other companies must satisfy their ERISA obligations to the Central States, Southeast and Southwest Area Pension Fund.

The employer obtained the distribution center from a food chain named Hinky Dinky, honored the labor agreement between Hinky Dinky and the union, and later negotiated a new agreement that expired in February 1986. The union initiated the information request after the employer confirmed a rumor that it intended to resell the center to Callum Companies, the parent corporation of Hinky Dinky. The center was eventually conveyed to the American Community Stores Corp., which the union claimed was "one and the same" as Hinky Dinky and Callum.

The judge agreed with the union's claim that the details of the alleged transfers were necessary to enable it to determine which entity was liable for the payment of certain unfunded liability to the fund, and held the General Counsel had shown the relevance of the information while the employer failed to show legitimate business reasons to refuse the information requested.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 554; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Omaha, 11 December 1984. Adm. Law Judge Donald R. Holley's decision issued 11 April 1985.

* * *

Niagara Fiberglass, Inc. (3-CA-12391; 279 NLRB No. 14) Buffalo, N.Y. 31 March. The Board affirmed the administrative law judge's dismissal of charges against the employer after finding the General Counsel did not meet its burden of showing that Martin Gawron's union activity was a motivating factor in the employer's decision to deny Gawron's request for a change to part-time status. Teamsters Local 264 argued this was a constructive discharge, because the employer knew that Gawron could not remain as a full-time employee.

In so finding, the judge noted that the record revealed "substantial evidence of poor work performance"--poor quality work, numerous pranks and prolonged attendance deficiencies--and that the employer had denied Gawron's previous request to reduce hours before any union activity had begun.

The Board added that even if the General Counsel had made a prima facie showing that protected activity was a motivating factor, the employer had shown sufficient reasons for not accommodating the request and had met its burden of demonstrating that it would have denied the request even in the absence of protected activity.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 264; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Buffalo, 7-8 January 1985. Adm. Law Judge Steven B. Fish's decision issued 20 November.

* * *

Trade Names, Inc., A Division of Lasalle-Deitch Co., Inc. (25-CA-16555; 279 NLRB No. 20) Elkhart, Ind. 31 March. On motion for summary judgment, the Board found unlawful the employer's refusal to bargain with Teamsters Local 364. The union had been certified as collective bargaining representative of all production, maintenance and parts department employees at the Elkhart facility.

Summary judgment was granted on a finding that all issues were or could have been litigated in the underlying representation proceeding.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 364; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 5 November 1984.

* * *

Heuer International Trucks, Inc. (10-CA-19174; 279 NLRB No. 18) Kennesaw, Ga. 31 March. Granting summary judgment, the Board found unlawful the employer's refusal to bargain with Teamsters Local 528. Following an election victory, the union had been certified as the collective bargaining representative of all service department employees at its Kennesaw truck servicing facility.

In deciding to vacate an earlier order which denied summary judgment and granted reconsideration on the unit question, the Board found that all issues raised were or could have been litigated in the underlying representation proceeding.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 528; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 1 December 1983.

* * *

Food and Commercial Workers Local 274 (21-CB-8778; 279 NLRB No. 26) Monterey Park, Calif. 4 April. The Board agreed with an administrative law judge's dismissal of charges alleging that the union violated the Act by refusing to bargain in good faith with Millco, Inc.

Although the parties had many points of controversy, the basic issue was whether or not the bargaining agreement they signed in May 1983 contained an MFN (most-favored-nations) provision.

Millco, an independent firm never a member of a multiemployer bargaining association, had historically adopted whatever agreement the union reached with Hotel, Restaurant & Institutional Meat Cutter Employer Association (HRI).

The judge noted that the 1979-1982 agreement between the union and Millco--unlike the 1979-1982 HRI agreement--did not contain an MFN clause; and that the 1982-1985 HRI agreement deleted the MFN clause it had previously contained. The judge further found that the employer referred throughout the negotiations to a contract reached by the union and Geldin Meat Company, the lead company in the 1982 independent negotiations, and that the Geldin contract did not contain an MFN clause.

The judge concluded that the union did not mislead Millco or its negotiators nor withhold pertinent information from them. The judge stated: "It appears that Millco simply was not paying close attention to what was happening, and awoke to its situation after it realized that Merchants Meat (a competitor) had obtained lower wages from the union than it had obtained."

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Millco, Inc.; complaint alleged violation of the Act's Section 8(b)(3). Hearing at Los Angeles, 9 April 1985. Adm. Law Judge Russell L. Stevens' decision issued 16 July.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Embossing Printers, Inc. (Graphic Communications Local 550), Battle Creek, Mich. 19 March. 7-CA-19268, et al.; JD-67-86, William A. Gershuny, Adm. Law Judge

Professional Maintenance of Long Island, Inc. (Service Employees Local 32B-32J), Hempstead, N.Y. 19 March. 29-CA-11411(E); JD-(NY)-16-86, Eleanor MacDonald, Adm. Law Judge

ICG Electric, Inc. (Electrical Workers (IBEW) Local 113), Colorado Springs, Colo. 26 March. 27-CA-9184; JD-(SF)-32-86, George Christensen, Adm. Law Judge

Brookshire Grocery Co. (Teamsters Local 745), Tyler, Tex. 28 March. 16-CA-12370; JD-(ATL)-21-86, Lawrence W. Cullen, Adm. Law Judge

Roadmaster Corp. (Individual), Olney, Ill. 28 March. 14-CA-18086; JD-(ATL)-18-86, Howard I. Grossman, Adm. Law Judge

J & B Smith Co., Inc. (Teamsters Local 728), Atlanta, Ga. 28 March. 10-CA-21267; JD-(ATL)-22-86, Howard I. Grossman, Adm. Law Judge

National Livery Service, Inc. (New York Hotel & Motel Trades Council and Individual), New York, N.Y. 31 March. 2-CA-20519, 20538; JD-(NY)-25-86, Arthur A. Herman, Adm. Law Judge

Clark & Wilkins Industries, Inc. (Iron Workers Local 455), [illegible] York, N.Y. 31 March. 2-CA-21012, 2-RC-19908; JD-(NY)-13-86, Winifred D. [illegible]rio, Adm. Law Judge

Magic Chef, Inc. (Molders and its Local 48 and Individual), Cleveland, Tenn. 31 March. 10-CA-18978, et al.; JD-77-86, Irwin H. Socoloff, Adm. Law Judge

Teamsters Local 332 (Martin's Leasing Co.), Flint, Mich. 31 March. 7-CA-24435; JD-83-86, Donald R. Holley, Adm. Law Judge

Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Div. of Beverage Management, Inc. (Teamsters Local 249), Pittsburgh, Pa. 31 March. 6-CA-18437; JD-79-86, Joel A. Harmatz, Adm. Law Judge

Plumbers Local 305 (Stone & Webster Engineering Corp. and Eastern Connecticut Mechanical Contractors Association, Inc.) (Individual), Uncasville, Conn. 31 March. 39-CA-660; JD-(NY)-23-86, Joel P. Biblowitz, Adm. Law Judge

United Gilsonite Laboratories, Inc. (Teamsters Local 229), Scranton, Pa. 1 April. 4-CA-14822, 14860; JD-85-86, Hubert E. Lott, Adm. Law Judge

Burkart Foam, Inc. (Machinists District 111, Lodge 1076), Cairo, Ill. 1 April. 14-CA-17995; JD-75-85, Bernard Ries, Adm. Law Judge

Target Stores, Div. of Dayton-Hudson Corp. (Painters District Council 2), St. Louis, Mo. 2 April. 14-CA-18053; JD-81-86, Steven M. Charno, Adm. Law Judge

Fountainview Place (Food and Commercial Workers Local 917), Indianapolis, Ind. 3 April. 25-CA-17436, 17457, 25-RC-8208; JD-72-86, Phil W. Saunders, Adm. Law Judge

M.U. Industries, Inc. (Clothing and Textile Workers Local 37-38H), Minneapolis, Minn. 3 April. 18-CA-9118; JD-88-86, Martin J. Linsky, Adm. Law Judge

Auto Workers Local 848 (LTV Aerospace & Defense Co.) (Individuals), Grand Prarie, Tex. 3 April. 16-CB-2478, 2496; JD-87-86, Arline Pacht, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Simpson Torrence Div., Simpson Industries, Inc. (9-RC-14868), Dayton, Ohio. 28 March. Production and maintenance employees shall vote for representation by Molders Local 45, or for no representation.

Hyde's Security Services, Inc. (9-RC-14861), Ft. Knox, Ky. 26 March. Guards shall vote for representation by the Guards Union Region No. 1, or for no representation.

Capital ARA/Cory Refreshment Services (9-RC-14863), Monroe, Ohio. 27 March. Employees shall vote for representation by Teamsters Local 836, or for no representation.

Brakur Custom Cabinetry, Inc. (13-RC-16841), Joliet, Ill. 2 April. Full-time and regular part-time production and maintenance employees, janitors and truck drivers shall vote for representation by Machinists District Lodge No. 55, or for no representation.

NATIONAL LABOR RELATIONS BOARD
DIVISION OF INFORMATION
WASHINGTON, DC

4 April 1986

NOTICE OF PUBLICATION

Volume 33 of COURT DECISIONS RELATING TO THE NATIONAL LABOR RELATIONS ACT has been published by the Superintendent of Documents, U.S. Government Printing Office.

Volume 33, 1342 pages, covers the period 1 January 1981 through 31 December 1981.

The Price: $43.00

Orders for Volume 33, Stock No. 031-000-00254-1, should be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Orders must be accompanied by cash, check or money order--unless the purchaser has a Deposit Account Number. Do NOT send orders or payments to the NLRB.

An order form follows:

ORDER FORM To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Send _____ copies of Volume 33, Court Decisions Relating to the National Labor Relations Act.
Stock No. 031-000-00254-1. Price: $43.00

Company or personal name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity		Charges
	Enclosed	
	To be mailed	
	Subscriptions	
Postage		
Foreign handling		
MMOB		
OPNR		
	UPNS	
	Discount	
	Refund	

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2012

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

7 - 11 APRIL 1986 (W-2012)

NEWARK PUBLIC LIBRARY

MAY 1 1986

U. S. GOVT. PUBS.
DEPOSITORY 375

CASES SUMMARIZED

Accurate Web, Inc.	Deer Park, N.Y.	1
Bryan Memorial Hospital	Lincoln, Neb.	4
Candler Coffee Corp. and Teamsters Local 810	New York, N.Y.	2
Distron, a div. of Burger King Corp.	Syosset, N.Y.	6
Elal Realty Management Inc.	Queens, N.Y.	5
Futuramik Industries	Hartford, Conn.	1
Hale Nani Health Center	Honolulu, Hawaii	6
Proctor Mechanical Corp.	Des Moines, Iowa	3
Ryder/P-I-E Nationwide, Inc.	Franklin, Wis.	2
Southern Lumber Co., Inc.	Crosby, Miss.	3
United Electrical & Mechanical, Inc.	Phoenix, Ariz.	4

LR1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 7

List of Directions of Elections by Regional Directors 8

Request Form for Decisions

* * *

CORRECTION: The last issue, 31 March - 4 April 1986, contained two errors. The summary of U.S. Steel Corp., 279 NLRB No. 4, on page 6, erroneously identified Member Johansen as participating in the decision. The correct panel, as stated elsewhere in the summary, consisted of Chairman Dotson and Members Dennis and Babson. In the summary of The Trustees of Columbia University in the City of New York, 279 NLRB No. 19, the correct panel members were Chairman Dotson and Members Dennis and Babson. We regret any confusion these errors may have caused.

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Futuramik Industries (39-RC-481; 279 NLRB No. 21) Hartford, Conn. 7 April. The Board found that Mercedes Sanchez had apparent authority to act for the employer, and that the employer therefore engaged in objectionable preelection conduct when Sanchez threatened to report certain employees to the Welfare Department and Immigration Service if employees chose union representation. It thus sustained an objection to the election held 3 February 1984.

Turning to another matter, the Board sustained a challenge to a ballot cast by Gloria Trefethen, wife of a company official. It concluded that her interests were more closely aligned with those of management than with those of other employees and, therefore, that she should not be included in the bargaining unit.

The election resulted in 93 votes for the Ladies Garment Workers and 86 against, with 23 challenged and 1 void ballot. The Board directed the Regional Director to open and count 18 ballots, the challenges to which had been overruled or withdrawn, and to prepare a revised tally. If a majority of ballots was cast against the union, the election will be set aside and a second one held.

(Chairman Dotson and Members Dennis and Babson participated.)

***

Accurate Web, Inc. (29-CA-11552; 279 NLRB No. 30) Deer Park. N.Y. 7 April. The Board affirmed an administrative law judge's finding that the employer unlawfully withdrew recognition from Typographical Union Local One, certified representative of the company's production and maintenance employees.

The judge found that all issues raised were or could have been litigated in a prior representation proceeding. In that proceeding, a Regional Director dismissed a decertification petition on the grounds that the union's one-year certification period had not expired at the time the decertification petition was filed.

The judge further said that, even if the representation proceeding did not preclude relitigation, he would find an unlawful withdrawal of recognition. He noted that on 9 May 1983, in settlement of unfair labor practice charges, the employer and the union entered into an agreement by which the parties extended the certification year and the employer agreed to bargain in good faith. Because the employer withdrew recognition during the certification year, as extended, it violated the Act, the judge held.

Member Dennis found it unnecessary to decide whether the Board's rule against relitigation is applicable in the circumstances of this case and relied on the judge's alternative rationale.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Typographical Union Local One; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Brooklyn, 25 February 1985. Adm. Law Judge D. Barry Morris' decision issued 3 September.

***

Candler Coffee Corporation and Teamsters Local 810 (2-CA-19305, 2-CB-9698; 279 NLRB No. 32) New York, N.Y. 8 April. The Board affirmed an administrative law judge's approval of employer and union motions to withdraw the unfair labor practice charges they filed against each other, alleging misconduct during a strike.

After the hearing began, the union and the employer worked out a settlement of their disputes and requested withdrawal of the charges. The General Counsel opposed the requests, arguing that the parties should be required to sign informal settlement agreements on the usual forms. Only an informal settlement agreement on the usual Board forms would enable the General Counsel to "police enforcement" of its terms, the General Counsel said.

The judge noted there was no reasonable possibility that the union and the employer would resume their dispute since they are now parties to a three year contract with no strike-no lockout clauses and with grievance-arbitration procedures. He concluded that no useful purpose would be served by resurrecting the underlying dispute, and he dismissed the complaint.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 810 and Candler Coffee Corporation; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5) and 8(b)(1)(A). Adm. Law Judge James F. Morton's decision issued 26 August 1983.

***

Ryder/P-I-E Nationwide, Inc. (30-CA-8074; 279 NLRB No. 28) Franklin, Wis. 9 April. The Board denied an employer motion for summary judgment and remanded the proceeding for hearing on allegations that the employer unlawfully terminated an employee because he filed charges, gave testimony under the Act, and sought to comply with a Board settlement.

In moving for summary judgment, the employer contended that the Board should defer to an arbitration decision upholding the employee's discharge because the employee and the company agreed in a settlement approved by the Regional Director to submit the discharge grievance to final and binding arbitration.

The General counsel argued that alleged violations of Section 8(a)(4) of the Act cannot be deferred, even where the charging party agrees to that deferral,

and that the settlement should be voided under the Board's holding in International Harvester Co., 271 NLRB 647 (1984).

The Board agreed that deferrral was inappropriate under its holding in International Harvester Co..

(Members Johansen, Babson and Stephens participated.)

Charges filed by Patrick N. Clement, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (4). Employer motion for summary judgment filed 10 January 1986.

***

Proctor Mechanical Corporation (18-CA-9202; 279 NLRB No. 33) Des Moines, Iowa. 8 April. The Board affirmed an administrative law judge's decision that the employer unlawfully refused to provide Plumbers Local 33 with information it requested as to possible "double-breasted" operations by a nonunion company associated with the employer.

The union was investigating the extent to which union companies were operating nonunion companies to perform work that would otherwise be done by unionized employees.

The issue, the judge noted, was not whether Proctor was engaging in a double-breasted operation, but whether the union had actual cause for asking relevant questions. He found that the union had an "objective factual basis" for its belief that the unionized employer was involved in such operations, and that the union had the right to request, and demand, information on both the unionized and nonunionized operations.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Plumbers Local 33; complaint alleged violation of the Act's Section 8(a)(1) and (5). Adm. Law Judge Walter J. Alprin's decision issued 9 January 1985.

***

Southern Lumber Company, Inc. (15-CA-9624; 279 NLRB No. 27) Crosby, Miss. 7 April. Upholding an administrative law judge's decision, the Board found that the employer unlawfully refused to bargain with Carpenters Local 2095, the certified representative of its production and maintenance employees.

The judge rejected an employer argument that the union failed to "police" its certification and therefore the certification should be revoked. He noted that in April 1985 the employer filed a charge predicated on the same argument: that the union failed to represent employees by refusing to enforce its certification. The Acting Regional Director dismissed the charge, finding that the union had represented employees by requesting meetings with the employer and by requesting bargaining on two occasions. The judge thus found the employer's argument invalid for the reasons explicated in the Acting Regional Director's dismissal letter.

The employer also denied that it was dealing with the representatives of the certified labor organization when it met with union agents and with individuals associated with the Southern Council of Industrial Workers. The employer's actions demonstrated that it had no doubt about the representative status of those individuals, the judge found in rejecting the employer's claim.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Carpenters Local 2095; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Natchez, 10 July 1985. Adm. Law Judge Howard I. Grossman's decision issued 12 December.

***

United Electrical & Mechanical, Inc. (28-CA-8053; 279 NLRB No. 34) Phoenix, Ariz. 9 April. The Board affirmed an administrative law judge's finding that the employer unlawfully discharged three employees because of their activities for Plumbers Local 469.

The judge rejected employer contentions that it discharged Alan Parfitt and Rubin Felix for "poor workmanship" and John Lehner for "working too slowly." Parfitt and Felix were among the six who attended the first union meetings, the judge found. He also said that while Lehner was not the "organizing spearheader" that Parfitt and Felix were, "he posed a danger that other employees did not--Respondent knew he could not be dissuaded by pre-election propaganda."

The employer created an unlawful impression of surveillance when a supervisor told an employee that he knew who the "union guys" were, the judge concluded. He also found a violation in that supervisor's asking an employee if he was still going to vote "yes" in the election.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Plumbers Local 469; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Phoenix, 18-21 June and 11 July 1985. Adm. Law Judge James M. Kennedy's decision issued 22 November.

***

Bryan Memorial Hospital (17-CA-11477, 11681; 279 NLRB No. 39) Lincoln, Neb. 9 April. The Board affirmed an administrative law judge's decision that the employer violated the Act by unilaterally changing maternity leave policy, by withdrawing recognition from the Nebraska Nurses Association, and by making unilateral changes in its health insurance plan after withdrawing recognition.

The employer contended that it had a good-faith doubt of the union's majority status, based on a decertification petition signed by more than 30 percent of unit employees and on affidavits from bargaining unit employees indicating that

a majority did not want the union to represent them or wanted a new election.

Rejecting the employer's arguments, the judge said that employer receipt of employees' unverified assertions is insufficient to claim a reasonably-based conviction that employees want to get rid of the union. He also pointed out that the affidavits did not assert that a majority did not want representation. Rather, he said, the documents claimed only that a majority either did not want continued representation or desired to have an election.

Having found that the employer unlawfully withdrew recognition on 20 June 1983, the judge further concluded that it violated the Act by making unilateral changes in insurance on 1 July 1983.

(Members Dennis, Johansen and Babson participated.)

Charges filed by the Nebraska Nurses Association; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Lincoln, 31 October and 1 November 1983. Adm. Law Judge Irwin H. Socoloff's decision issued 12 December 1984.

***

Elal Realty Management Inc. (29-CA-10463; 279 NLRB No. 2) Queens, N.Y. 31 March. Affirming an administrative law judge's decision, the Board found that the employer, after acquiring an apartment building in a bankruptcy proceeding, unlawfully terminated three employees because of their affiliation with Service Employees Local 32B--32J and refused to recognize and bargain with the union.

On 1 April 1983 the employer began managing the building; then, on 11 April, it temporarily relinquished the building until appropriate documents were filed for bankruptcy court approval. When the employer resumed management on 29 April it summarily discharged the three building service employees and replaced them with nonunion employees.

The company argued that it never employed the three men and therefore it could not have discharged them. The Board noted that on 29 April, two of the men worked full shifts before they were given termination letters for themselves and the third employee. It thus held that the company had employed the three and that the discharges were unlawful because they were motivated by antiunion considerations.

As successor employer of the building service employees, the company was obligated to bargain with the union, the judge found.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Service Employees Local 32B--32J; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Brooklyn on dates in August and October 1984. Adm. Law Judge Marion C. Ladwig's decision issued 19 March 1985.

***

Beverly Enterprises-Hawaii, Inc. d/b/a Hale Nani Health Center (37-CA-2349; 279 NLRB No. 31) Honolulu, Hawaii. 10 April. Granting summary judgment, the Board found unlawful the employer's refusal to bargain with the Collective Bargaining Organization of the Hawaii Nurses Association, the certified collective-bargaining representative of all registered nurses and licensed practical nurses at the employer's facility.

The Board found that the employer raised no issues which were not or could not have been litigated in the underlying representation proceeding.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Collective Bargaining Organization of the Hawaii Nurses Association; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 24 January 1986.

***

Distron, a division of Burger King Corporation (29-CA-10618; 279 NLRB No. 29) Syosset, N.Y. 10 April. The Board affirmed an administrative law judge's finding that the employer violated the Act by suspending and then discharging Frank Guidice because he joined and assisted Teamsters Local 707 in an unsuccessful organizing campaign and engaged in other protected concerted activities.

Applying the Board's Wright Line analysis, the judge concluded that the General Counsel established that the employer was substantially motivated by Guidice's protected concerted activity, and he rejected the employer's alleged business purpose for the discharge.

Guidice had been a vocal advocate of employee displeasure over a new method of computing pay, played a leading role in the unsuccessful Teamster campaign and spoke out at pre-election meetings held between the employees and company officials.

The judge termed the timing of the discharge, only four months after the union lost a representation election, as "suspect," and he noted the eight-year exemplary work record of Guidice.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Frank Guidice, an Individual; complaint alleged violation of the Act's Section 8(a) (1) and (3). Hearing at Brooklyn, 6, 7, 8, 11 and 21 June 1984. Adm. Law Judge Robert T. Snyder's decision issued 26 November 1985.

***

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Food and Commercial Workers Local 23 (S & I Valu King), Ellwood City, Pa. 6 March. 6-CP-434; JD-55-86, William A. Gershuny, Adm. Law Judge

Sheet Metal Workers Local 162 (Enterprise Mechanical, Inc.) (Individual), San Francisco, Calif. 30 March. 20-CB-6358(E); JD-(SF)-24-86, Joan Wieder, Adm. Law Judge

Best Glass Co. (Individual), Las Vegas, Nev. 21 March. 31-CA-10124; JD-(SF)-31-86, Michael D. Stevenson, Adm. Law Judge

California Dental Care, Inc. (Dentists, Physicians and Related Professional Unions), Roseville, Calif. 24 March. 20-CA-17381; JD-(SF)-30-86, Jay R. Pollack, Adm. Law Judge

Wilshire Foam Products, Inc. (Steel Workers Local 14407), Torrance and Carson, Calif. 24 March. 21-CA-23283, et al.; JD-(SF)-28-86, Timothy D. Nelson, Adm. Law Judge

Hughes Helicopters, Inc. (Machinists District Lodge 49), Mesa, Ariz. 25 March. 28-CA-8102; JD-(SF)-29-86, Frederick C. Herzog, Adm. Law Judge

Carl's Jr. (Hotel and Restaurant Employees Local 11 and Individual), Los Angeles, Calif. 27 March. 21-CA-23062, et al., 21-RC-17377; JD-(SF)-25-86, Joan Wieder, Adm. Law Judge

Community Hospital of North Las Vegas (Teamsters Local 995), North Las Vegas, Nev. 28 March. 31-CA-15345; JD-(SF)-35-86, Jerrold H. Shapiro, Adm. Law Judge

Abernathy's Restaurant (Individuals), Walnut Creek, Calif. 28 March. 32-CA-6796, 7256; JD-(SF)-33-86, Richard J. Boyce, Adm. Law Judge

Air Express International USA, Inc. (Teamsters Local 961), Denver, Colo. 31 March. 27-CA-9289, 9374; JD-(SF)-34-86, James M. Kennedy, Adm. Law Judge

Theatrical Stage Employees and Moving Picture Machine Operators Local 150 (Landmark Theatre Corporation) (Landmark Theatre Corp.), Los Angeles, Calif. 31 March. 31-CP-532; JD-(SF)-36-86, Burton Litvack, Adm. Law Judge

American Federation of Musicians Local 6 (Hyatt Regency/Oakland) (National Association of Orchestra Leaders), Oakland, Calif. 2 April. 32-CC-975; JD-(SF)-38-86, Jay R. Pollack, Adm. Law Judge

Mine Workers Locals 2230 and 2453 and District 30 (Sidney Coal Co.), Sidney, Ky. 7 April. 9-CB-6146, 9-CP-292; JD-80-86, Marion C. Ladwig, Adm. Law Judge

La-Z-Boy (Furniture Workers), Dayton, Tenn. 7 April. 10-CA-21326; JD-(ATL)-26-86, William N. Cates, Adm. Law Judge

Theatrical Stage Employees Local 41 (Atlanta Ballet) (Individual), Atlanta, Ga. 8 April. 10-CB-4665; JD-(ATL)-29-86, J. Pargen Robertson, Adm. Law Judge

Apple Glass Co. (Individual and Painters Local 27, Chicago and Vicinity), Chicago, Ill. 8 April. 13-CA-24872, et al.; JD-89-86, Thomas E. Bracken, Adm. Law Judge

Auto Workers Local 701 (Avis Rent a Car System, Inc.), Chicago, Ill. 8 April. 13-CB-11076; JD-93-86, Claude R. Wolfe, Adm. Law Judge

Auto Workers District 65 (Whitehead Brothers, Inc.), Port Elizabeth, N.J. 9 April. 4-CB-5092; JD-95-86, Walter H. Maloney, Jr., Adm. Law Judge

American Bakeries Co. and Teamsters Local 51 (Bakers, Confectionery and Tobacco Workers Local 326), Ypsilanti and Port Huron, Mich. 10 April. 7-CA-24655, 7-CB-6522; JD-96-86, Bernard Ries, Adm. Law Judge

Abbey's Transportation Services, Inc. (New York Hotel and Motel Trades Council), Long Island City, N.Y. 10 April. 29-CA-10749, et al., 29-RC-6023; JD-97-86, Wallace H. Nations, Adm. Law Judge

Milwaukee Terminal Services, Inc. (Teamsters Local 200), Milwaukee, Wis. 10 April. 30-CA-8684; JD-84-86, Richard A. Scully, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Tridelta Industries, Inc. (8-RC-13413), Mentor, Ohio. 2 April. Production and maintenance employees, warehouse employees, shipping and receiving employees, quality control employees, production control employees, truckdrivers and leadmen shall vote for representation by Teamsters Local 436, or for no representation.

Junkin Safety Appliance Co. (9-RC-14880), Louisville, Ky. 8 April. Production and maintenance employees shall vote for representation by Teamsters Local 89, or for no representation.

Con Agra Poultry Co. (15-RC-7246), Shreveport, La. 7 April. Full-time and regular part-time production and maintenance employees shall vote for representation by Food & Commercial Workers District 327, or for no representation.

M-Y Foods, Inc. (17-RD-1029), Kansas City and Raytown, Mo. 1 April. Full-time and regular part-time employees engaged in handling or selling merchandise or performing other services shall vote for representation by Food and Commercial Workers Local 576, or for no representation.

Tobin-Hamilton Co., Inc., a subsidiary of Mercury International Trading Corp. (17-RD-1025), Mansfield, Mo. 2 April. Production and maintenance employees shall vote for representation by Shoe Div., Clothing and Textile Workers, or for no representation.

Continental Pet Technology, Inc., a subsidiary of the Continental Can Co., Inc. (26-RC-6841), Olive Branch, Miss. 28 March. Production, maintenance, warehouse employees, and quality control employees shall vote for representation by Graphic Communications Local 321-M, or for no representation.

USS Chemicals, Division of United States Steel (31-RC-6007), Colton, Calif. 31 March. Full-time and regular part-time production and maintenance employees including shipping and receiving employees shall vote for representation by Teamsters Local 166, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2013

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

14 - 18 APRIL 1986 (W-2013)

MAY 1 2 1986

U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Adolph's Construction Co., Inc.	Greenfield, Wis.	8
Baker Hospital, Inc.	North Charleston, S.C.	3
Bingham-Willamette Co.	Portland, Ore.	1
CCA Heating & Air Conditioning, Inc.	Westminster, Colo.	8
Centralia Container, Inc.	Centralia, Ill.	6
Clapp (Clarence E.)	Stayton, Ore.	7
Electra Food Machinery, Inc.	El Monte, Calif.	1
Kendall School of Design	Grand Rapids, Mich.	3
Leisure Lodge	Camden, Ark.	6
Lorimar Productions, Inc.	Culver City, Calif.	4
Metropolitan Edison Co.	Reading, Pa.	7
North Arundel Hospital Association, Inc.	Glen Burnie, Md.	5
Raytheon Missile System Div., Raytheon Co.	Andover, Mass.	2

LR 1.15/2:

Roadway Express, Inc.	Toledo, Ohio	4
University of New Haven	West Haven, Conn.	2

OTHER CONTENTS

List of Decisions of Administrative Law Judges 9

List of Directions of Elections by Regional Directors 9

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Guy F. Atkinson d/b/a Bingham-Willamette Company (36-CA-4802, 4812; 279 NLRB No. 37) Portland, Ore. 14 April. Chairman Dotson and Member Dennis affirmed an administrative law judge's decision that the employer did not engage in unlawful disparate treatment when it discharged two strikers for picket line misconduct while only suspending a nonstriker for his misconduct. Member Johansen would find disparate treatment that was discriminatorily motivated.

The judge found that the employer could view Daniel Gruver's misconduct as not rendering the nonstriker unfit for employment in light of his prompt apology for his assault on a striker and his offer to make restitution for any loss of personal property. He added that the employer could properly determine that strikers Robert Pierce and Michael Jewett, who did nothing to alleviate the coercive impact of their misconduct, which included throwing eggs, beating upon a van, and hitting a non-striker, were unsuitable for future employment. The panel majority agreed that the employer had a reasonable and sound basis for its dissimilar, but nondiscriminatory, treatment of the three employees.

Member Johansen said: "Gruver's unprovoked and vicious attack on a defenseless middle-aged fellow who was peacefully and lawfully picketing was far more blameworthy than the conduct of Pierce and Jewett." He would find that the difference in treatment was motivated by Pierce's and Jewett's having "walked too intensively" on the picket line.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Machinists Local 63; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Portland, 14 May 1985. Adm. Law Judge Harold A. Kennedy's decision issued 29 Aug.

***

Electra Food Machinery, Inc. (21-RC-17473; 279 NLRB No. 40) El Monte, Calif. 14 April. The Board held that widespread threats to damage the property of and to kill and physically harm those nonsupportive of Teamsters Local 420 , continuing over a two-month period up to election day, created an atmosphere of fear and reprisal and interfered with the conduct of the election held 1 November 1984.

As the conduct was not attributable to the union, it was analyzed under the third-party standard, i.e., whether the character of the conduct was so aggravated as to create a general atmosphere of fear or reprisal rendering free choice impossible. In finding the conduct to be so aggravated, the Board noted that serious written threats--to kill or beat up identified or suspected nonunion adherents and burn their cars--were widely disseminated.

The election which resulted in 37 votes for, and 11 against, the union, with 13 nondeterminative challenged ballots and 1 void ballot, was set aside and a second election directed.

(Chairman Dotson and Members Dennis and Babson participated.)

***

University of New Haven (39-CA-23(E), et al.; 279 NLRB No. 43) West Haven, Conn. 14 April. Contrary to an administrative law judge,the Board held that General Counsel was substantially justified in litigating against the employer in a 1983 unfair labor practice proceeding (267 NLRB 939). It thus found that the employer was not entitled to an award of attorney fees and expenses incurred during its defense.

In the 1983 decision and order, the Board dismissed allegations that the employer unlawfully withdrew recognition from American Federation of Teachers Local 3956. The dismissal was based on a finding that the university's faculty members, whom the union represented, were managerial employees under the Supreme Court's opinion in NLRB v. Yeshiva University (444 U.S. 672 (1980)).

In holding that the General Counsel's position was substantially justified, the Board noted that Yeshiva was not so factually identical that its holding is conclusive of the status of the New Haven faculty, and that the various areas of conflicting evidence demonstrated that the case turned in part on credibility issues properly submitted to an administrative law judge for determination.

The Board also pointed out that the General Counsel tried the case at a time when Yeshiva had recently transformed the law regarding the managerial status of faculty members. Thus, the General counsel was faced with unsettled case law and few guidelines, it said.

(Chairman Dotson and Members Dennis and Stephens participated.)

Adm. Law Judge William A. Gershuny's supplemental decision issued 15 March 1984.

***

Raytheon Missile System Div., Raytheon Company (1-CA-22060, 22077; 279 NLRB No. 35) Andover, Mass. 14 April. Reversing an administrative law judge's finding, the Board held that the employer did not violate the Act by transferring an employee who had attended a union meeting.

The Board found that Marie Landry, a compensation assistant in the industrial relations department, was transferred for a legitimate business reason. It noted she had access to certain confidential labor relations information which the employer had more than "a conjectural basis" for fearing she might disclose to the union.

On another issue, Members Johansen and Babson held, as did the judge, that the employer unlawfully interrogated employees when, during an informal employee discussion of a union meeting, a supervisor asked who had attended. They said that the "probing attempts to find out about the specific union activities of particular employees who had not as yet disclosed their attitudes towards the Union" had a reasonable tendency to interfere with employee rights.

Member Stephens would not find unlawful interrogation. Examining the

the totality of the circumstances, he noted the lack of a background of discrimination or of employer hostility, the fact that the supervisor was not very high in the company's hierarchy, and the manner in which the supervisor entered the conversation--he was drawn into the discussion by employees jokingly asking if he had attended the meeting.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Electronic Workers (IUE); complaint alleged violation of the Act's Section 8(a) and (3). Hearing at Boston on various dates between 20 September and 12 December 1984. Adm. Law Judge Norman Zankel's decision issued 2 April 1985.

***

David Walcott Kendall Memorial School a/k/a Kendall School of Design (7-UC-226; 279 NLRB No. 42) Grand Rapids, Mich. 14 April. The Board agreed with a Regional Director that the employer's faculty members are not managerial employees, as that term was defined by the Supreme Court in NLRB v. Yeshiva University, 444 U.S. 672 (1980).

The Regional Director said: "The faculty as a whole and individually exercise astonishingly little power as best exemplified by the individual faculty member's inability to make independently even those decisions basic and necessary to teaching their own classes. These include determining course content, choosing the text, taking field trips, cancelling class sessions, trading classes or using a substitute teacher." He thus held that the faculty does not formulate and effectuate management policies.

After the employer withdrew recognition from the Kendall Faculty Association on the ground that the faculty members were managerial, the union filed charges and a complaint was issued. The parties then agreed that a unit clarification petition would more expeditiously resolve the controversy.

The Board dismissed the unit clarification petition.

(Chairman Dotson and Members Johansen and Babson participated.)

***

Baker Hospital, Inc. (11-RC-5265; 279 NLRB No. 38) North Charleston, S.C. 16 April. Applying the "disparity-of-interests" test, the Board held that the hospital's clerical employees, activities director, and social services director should be included in a unit with service and maintenance employees. It directed an election to determine unit employees' desire for representation by Professional and Technical Employees Local 218.

The Board found that the business office clericals had significant, work-related contact with service and maintenance employees, and shared many terms and conditions of employment with those workers. It concluded that there were no "sharper than usual differences" which would demonstate a disparity of interests between business office clericals and service and maintenance employees that

would be sufficient to justify excluding the clericals from the unit.

The activities director and social services director share the same benefits and facilities and are governed by the same hospital policies, rules, and regulations as the unit employees, the Board found. It did not find the requisite disparity of interest to exclude them from the bargaining unit.

The Board relied on the standards of St. Francis Hospital II, 271 NLRB 948 (1984), in which the Board, rather than applying the traditional community-of-interests analysis to the health care industry, chose to apply a stricter standard which focuses on the disparity of interests among employee groups which would inhibit fair representation of employee interests.

(CHairman Dotson and Members Dennis, Johansen and Babson participated.)

***

Roadway Express, Inc. (8-CA-14982; 279 NLRB No. 41) Toledo, O. 15 April. Reconsidering a 1984 decision and order (268 NLRB 982) under a Wright Line analysis, the Board reaffirmed its finding that the Employer unlawfully removed breakroom bulletin boards.

The Board found that the General Counsel made a prima facie showing that protected conduct--the posting of material for Teamsters for a Democratic Union as well as general union material--was a motivating factor in the employer's decision to remove the bulletin boards. The employer failed to establish that the same action would have been taken if employees had not continued posting union and TDU material, the Board further concluded.

On 21 January 1985 the Court of Appeals for the Sixth Circuit issued its opinion in Lawson Co. v. NLRB, 753 F. 2d 471 (6th Cir. 1985), holding that the Board erred in failing to apply the analysis set forth in Wright Line to an alleged violation of Section 8(a)(1) that turned on employer motivation. In light of that decision, the Board petitioned the court to remand this case to allow reconsideration under a Wright Line analysis.

(Chairman Dotson and Members Johansen and Babson participated.)

***

Lorimar Productions, Inc. (31-CA-12685, 31-RC-4957; 279 NLRB No. 36) Culver City, Calif. 15 April. The Board directed a second election to determine employees' desire for representation by Theatrical Stage Employees and Moving Picture Operators Local 717.

At the time the first election was held, a Board decision on review was pending on the issue of whether production coordinators should be included in a unit with estimators. The employer filed objections to the election alleging that employees should not have been required to vote while the Board's decision was

pending because employees voted under the impression--proved false when the Board's decision on review issued--that the unit would include both production coordinators and estimators. The objections were overruled.

In refusing to enforce the Board's order in a subsequent case in which the Board found unlawful the employer refusal to bargain, the United States Court of Appeals for the Ninth Circuit found that the procedures followed by the Board significantly impaired the conduct of the election by misleading the voters as to the scope of the unit, an issue which the court found essential to the voter's ability to cast an intelligent, voluntary vote.

The Board accepted the court's opinion as law of the case. It vacated the union's certification and rescinded its decision and order in the unfair labor practice proceeding.

(Chairman Dotson and Members Dennis and Babson participated.)

***

North Arundel Hospital Association, Inc. (5-RC-12187; 279 NLRB No. 48) Glen Burnie, Md. 16 April. The Board found no "sharper than usual differences" between the hospital's registered nurses and its other professional employees. It accordingly included them in an all-professional unit and directed an election to determine employees' desire for representation by the Maryland Nurses Association.

All the employer's professional employees share common policies and procedures and a sufficient degree of interaction and contact to warrant a finding that the smallest appropriate unit for bargaining is an overall professional unit, the Board said.

The Board relied on St. Francis Hospital (St. Francis Hospital II), 271 NLRB 948 (1984), in which it anounced that it would use the "disparity-of-interests" standard to determine the appropriateness of a petitioned-for unit in a health care institution. Under that test, sharper than usual differences between working conditions of the requested unit and those of the overall professional unit must be established to grant the unit.

An election held 16-17 January 1985 in a unit limited to registered nurses was vacated.

(Chairman Dotson and Members Dennis, Johansen and Babson participated.)

***

Centralia Container, Inc. (14-CA-18251; 279 NLRB No. 44) Centralia, Ill. 15 April. On motion for summary judgment, the Board found unlawful the employer's refusal to bargain with and failure to provide information to the Paperworkers.

The union had been certified as the collective-bargaining representative of all production and maintenance employees and truckdrivers, including leadmen, at the employer's Centralia facility.

Summary judgment was granted on a finding that all issues raised were or could have been litigated in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Paperworkers; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 10 February 1986.

***

Beverly Enterprises d/b/a Leisure Lodge (26-RC-6692; 279 NLRB No. 49) Camden, Ark. 17 April. Members Dennis and Johansen held that the nursing home operator's preelection announcement of a wage increase interfered with a 12 September 1984 election, which Food and Commercial Workers Local 1583 lost. Chairman Dotson would not find the announcement objectionable because, in his opinion, the increase was not designed to influence the election outcome.

The panel majority found that although employees were told some five months previously that a wage increase might be granted, they were also told that the increase would depend on an increase in the state Medicaid reimbursement rate. The wage increase was precipitously announced a full week before the employer received official notification that such a Medicaid increase was forthcoming, Members Dennis and Johansen said. They concluded that the employer rushed the increase forward in time to influence the election results.

Chairman Dotson noted that the preelection benefit increase was granted pursuant to a decision reached before the election petition was filed, and was implemented corporate-wide in a normal business fashion. He pointed out that the wage increase was implemented and announced statewide, at all 40 of the employer's nonunion facilities, on the same day as it was announced at the facility involved in this proceeding.

The election which the union lost was set aside and a second one directed.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

Metropolitan Edison Company (4-CA-12309, 13068; 279 NLRB No. 47) Reading, Pa. 17 April. Reversing an administrative law judge's decision, the Board held that the employer did not violate the Act by threatening employees with discipline if they refused to cross a picket line at a customer's plant, and by disciplining 14 employees who refused to cross a picket line at company headquarters.

The contract between the company and Electrical Workers (IBEW) Local 803 contained a no-strike/no-lockout clause.

In June 1981, the employer threatened to discipline employees if they refused to cross an informational picket line established at a jobsite by the Reading Building and Trades Council. In finding the threat lawful, the Board noted there was no evidence that the parties expressly excluded sympathy strikes from the coverage of the no-strike clause.

On 2 June 1982, 14 employees refused to cross a picket line established by Roofers Local 30 to protest a nonunion firm working on the roof of the employer's building. Contrary to the judge, the Board did not find that their refusal was protected by Section 502 of the Act, which provides that the quitting of labor because of abnormally dangerous work conditions shall not be deemed a strike. Local 30's activities did not pose any "abnormally dangerous" conditions for employees seeking to work, the Board said.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Electrical Workers (IBEW) Local 803; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Reading, 9 November 1982. Adm. Law Judge Marvin Roth's decision issued 11 February 1983.

***

Clarence E. Clapp (36-RC-4802; 279 NLRB No. 51) Stayton, Ore. 18 April. Contrary to the Acting Regional Director who recommended a new election, the Board certified the results of an election held 9 July 1985 in which two ballots were cast for Teamsters 324 and two against representation, with no challenged ballots.

The Acting Regional Director had recommended a new election on the basis of a letter sent by Jeffrey Fudge, an eligible voter, who claimed he had been denied the right to vote. Fudge alleged that although he arrived at the voting area within the time originally scheduled for the election, he found the polls closed.

The Board noted that it has long held that individual employees are not "parties" within the definition of "party" set forth in Section 102.8 of the Board's Rules. Finding, therefore, that Fudge was not a party to this proceeding, the Board decided to "dismiss Fudge's letter as purported objection made by an individual who is not a 'party' to this proceeding." In addition, the Board found that even if the letter was a proper objection, it was untimely filed, and Fudge had failed to serve a copy of his letter on the employer as required by Section 102.89 of the Board's Rules.

In view of this procedural posture, the Board believed it had no choice but to reverse the Acting Regional Director without reaching the merits.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

CCA Heating & Air Conditioning, Inc. (27-CA-9395; 279 NLRB No. 54) Westminster, Colo. 18 April. Members Dennis and Johansen granted summary judgment and held that the employer violated the Act by unilaterally discontinuing contributions to health and welfare, pension, vacation, and apprentice training funds, when those payments were required by its collective-bargaining agreement with Sheet Metal Workers Local 9. Chairman Dotson, dissenting, would deny summary judgment and dismiss the complaint.

Summary judgment was granted on employer failure to file an answer to the complaint.

Chairman Dotson woud find that the case involved a dispute solely over contract compliance, a matter in which, in his opinion, the Board should not become involved. He said: "a breach of contract is not necessarily an unfair labor practice and the National Labor Relations Board is not a collection agency for the recoupment of delinquent contributions."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Sheet Metal Workers Local 9; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 12 December 1985.

***

Adolph's Construction Co., Inc. (30-CA-8639; 279 NLRB No. 53) Greenfield, Wis. 18 April. Granting summary judgment, Members Dennis and Johansen held that the employer violated the Act by refusing to make required contributions to various benefit funds, by refusing to continue in full effect all the terms of its collective bargaining agreement with Laborers Local 113, and by refusing to bargain with the union about these contract modifications. Chairman Dotson would dismiss the complaint.

In Chairman Dotson's opinion, the Board must not become involved when a party seeks to involve the Board in a dispute arising solely over contract compliance, which he would find was the case here.

The panel majority found no need to examine the extent of the employer's repudiation of its contractual and bargaining obligations. As the employer filed no answer to the complaint or to the notice to show cause, the allegations that the employer violated the Act are deemed admitted, and any other matters are not at issue, it said.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Laborers Local 113; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 17 April 1985.

***

DECISIONS OF ADMINISTRATIVE LAW JUDGES

A.W. Schlesinger Geriatric Center (Service Employees Local 706), Beaumont, Tex. 31 March. 23-CA-10109, et al.; JD-86-86, Russell M. King, Jr., Adm. Law Judge

Hercules Inc. (Chemical Workers Local 271), Newark, N.J. 31 March. 22-CA-13912; JD-(NY)-26-86, Edwin H. Bennett, Adm. Law Judge

Power Piping Co. (Individual), Juliette, Ga. 31 March. 10-CA-21042; JD-(ATL)-20-86, William N. Cates, Adm. Law Judge

Teamsters Local 439 (Tracy American Ready Mix Co., Inc.) (Individual), Oakland, Calif. 4 April. 32-CB-2187, 2247; JD-(SF)-39-86, Richard D. Taplitz, Adm. Law Judge

Constructive Sheet Metal, Inc. (Sheet Metal Workers Local 410 and Individual), Grand Rapids, Mich. 14 April. GR-7-CA-23493, et al.; JD-99-86, Benjamin Schlesinger, Adm. Law Judge

Kellwood Company/American Recreation Products, Inc. (Ladies' Garment Workers), Fayette, Ala. 15 April. 10-CA-21215, 21430, 10-RC-13174; JD-(ATL)-6-86, Hutton S. Brandon, Adm. Law Judge

Hotel Roanoke (Hotel and Restaurant Employees Local 121), Roanoke, Va. 16 April. 5-CA-15924, et al.; JD-94-86, James L. Rose, Adm. Law Judge

Storer Communications, Inc., et al. (Electrical Workers (IBEW) Local 827), Willingboro, N.J. 16 April 22-CA-13569, et al.; JD-(NY)-28-86, James F. Morton, Adm. Law Judge

Hyatt Regency New Orleans (Service Employees Local 100), New Orleans, La. 16 April. 15-CA-9628; JD-103-86, Steven M. Charno, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Rustman Bus Co., Inc. (14-RC-10082), St. Louis County and St. Charles County, Mo. 9 April. Drivers, lot personnel, mechanics and utility men shall vote for representation by Teamsters Local 610, or for no representation.

Ebon Services International, Inc. (22-RC-9403), Newark, N.J. 14 April. Janitorial service employees including leadmen shall vote for representation by Allied Services Div., Railway, Airline and Steamship Clerks; by Service Employees Local 389; or by neither.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2014

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

21 - 25 APRIL 1986 (W-2014)

NEWARK PUBLIC LIBRARY
MAY 14 1986
GOVT. PUBS.
DEPOSITORY 375

CASES SUMMARIZED

Able Bus	New York, N.Y.	7
Alamo Cement	San Antonio, Tex.	9
Asociacion Hospital del Maestro	Hato Rey, P.R.	2
Beck's Riverside Hotel	Reno, Nev.	8
Boise Cascade Corp.	Rumford, Me.	4
Borden Inc., Chem. Div.	Boston, Mass.	5
Century Assets	Bronx, N.Y.	10
Clarion Hotel-Marin	San Rafael, Calif.	9
E G & G Florida, Inc.	Cocoa Beach, Fla.	7
Graphic Communications Local 582	Glen Burnie, Md.	11
McDonnell Aircraft Corp.	St. Louis, Mo.	6
McLean Trucking Co.	Cincinnati, O.	1
Mercy-Memorial Hospital	Monroe, Mich.	1
Morrison-Knudsen Co.	Iuka, Miss.	10

LR 1.15/2:

Ne Di Construction Co.	Henrico County, Va.	12
O.K. Machine & Tool Corp.	Bronx, N.Y.	12
Peschke Corp.	Hamtramck, Mich.	7
Port Plastics, Inc.	Sunnyvale, Calif.	3
Precision Bulk Transport	Caro and Fair Grove, Mich.	5
Quaker Rubber Co.	Philadelphia, Pa.	9
Ro-Lab Rubber Co.	Tracy, Calif.	3
Steamship Trade Assn.	Baltimore, Md.	6
Stop N' Go, Inc.	St. Louis, Mo.	2
Ventura County Star-Free Press	Ventura, Calif.	4

OTHER CONTENTS

List of Decisions of Administrative Law Judges 14

List of Directions of Elections by Regional Directors 15

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

McLean Trucking Company (9-CA-15063; 279 NLRB No. 46) Cincinnati, O. 21 April. Reversing a 1982 decision and order (261 NLRB 793), the Board held that the employer did not discharge Carl Daniels, in violation of the Act, because of his union and other protected concerted activities. It dismissed the complaint.

The General Counsel established a prima facie case of discriminatory discharge of the employee who had complained about employment practices and filed grievances, and who was elected union steward the day before his discharge, the Board noted. However, the Board further pointed out, Daniels' work record was "a great deal less than exemplary": he was warned and suspended on various occasions over his poor production and behavior. It thus concluded that the employer showed that it would have discharged Daniels, on the basis of his entire work record, even absent his union activities.

In finding the discharge unlawful, the administrative law judge in the 1982 proceeding had discounted Daniel's overall work record on the view that he was precluded from relying on any misconduct committed more than nine months prior to the discharge. In denying enforcement of the Board's order, the United States Court of Appeals for the Fourth Circuit held that the Board erred by failing to consider Daniels' entire work record.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

Mercy-Memorial Hospital (7-RD-1977; 279 NLRB No. 56) Monroe, Mich. 21 April. Members Dennis and Johansen overruled an objection alleging that the union impermissibly interfered with a decertification election by asking members, in a letter, to notify it of coworkers' pro-management sentiments. Chairman Dotson would find that the request constituted a threat to discipline members disloyal to union interests, and he would sustain the objection and direct a second election.

Members Dennis and Johansen found that the union's asking its members to advise of coworkers' promanagement activities was analogous to an employer's asking its supervisors during an election campaign to let management know what they hear concerning employees' union sentiments. Accordingly, the panel majority concluded, the union was entitled to utilize its membership lawfully to obtain information helpful to its campaign.

In Chairman Dotson's view, a letter exhorting employees to engage in surveillance of their coworkers cannot be dismissed as a "campaign document" nor can it be successfully analogized to an employer's lawful request--uncommunicated to employees--of its supervisors to apprise management of any information they receive concerning employees' union sentiments.

The Board panel majority certified that Hospital Employees Division of Service Employees Local 79 received a majority of the ballots cast in the 9 March 1983 election.

(Chairman Dotson and Members Dennis and Johansen participated.)

Asociacion Hospital del Maestro, Inc. (24-CA-5110; 279 NLRB No. 62) Hato Rey, P.R. 22 April. The Board agreed with an administrative law judge's dismissal of allegations that the employer unlawfully refused to arbitrate grievances after its contract with Hotel Employees and Restaurant Employees Local 610 expired.

The union requested arbitration for grievances which arose after contract expiration. In the arbitration process, the employer contended as a affirmative defense that the arbitrators lacked jurisdiction because the contract had expired and, therefore, there was no contractual obligation to arbitrate. The arbitrability was considered by the arbitrators, who concurred with the employer that there was a lack of jurisdiction.

The judge found that the employer did not refuse to arbitrate. Rather, he said, the employer merely raised the issue of arbitrability during the arbitration process, to which it had submitted. He thus dismissed the allegation of wrongdoing.

(Members Dennis, Babson and Stephens participated.)

Charges field by Hotel Employees and Restaurant Emplyoees Local 610; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Hato Rey, 18 June 1985. Adm. Law Judge Thomas R. Wilks' decision issued 20 Sept.

***

Stop N' Go, Inc. (14-CA-15837; 279 NLRB No. 52) St. Louis, Mo. 21 April. The Board agreed with an administrative law judge that the convenience store operator responded to a Food and Commercial Workers Local 655 organizing campaign by unlawfully threatening store closure and discharge, coercively interrogating employees, creating impressions of surveillance, and discharging Karen and Michael Eberhardt over their union activity.

The Board did not find, as did the judge, that the union represented a majority of unit employees when it requested bargaining on 5 March 1982. The Board noted that a union organizer admitted that he "left some cards with one employee to have another employee fill out" and returned later to pick up the cards. Thus, 27 cards were authenticated solely on the basis of testimony of the union organizers who neither witnessed the employees sign the cards nor received the cards directly from the signers--testimony which, the Board said, is inadequate to prove each was signed by the person whose name appeared on the card. It held that, at most, the General Counsel established that the union attained 14 valid cards in a unit composed of 69 employees.

The Board accordingly held that a bargaining order was not appropriate.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Food and Commercial Workers Local 655; complaint alleged violation of the Act's Section 8(a)(1),(3), and (5). Hearing at St. Louis, 2-3 August 1982. Adm. Law Judge Claude R. Wolfe's decision issued 11 January 1983.

Port Plastics, Inc. (32-CA-4234; 279 NLRB No. 50) Sunnyvale, Calif. 22 April. Agreeing with an administrative law judge, the Board found that the employer violated the Act by refusing to bargain in good faith with Glass Workers Local 1621, by discharging Robert Delhagen for engaging in union activities, and by interrogating employees about their feelings for the union.

The Board reversed the judge's finding of violation in a statement by the company's president that he would no longer be able to speak to employees on a one-to-one basis if the union came in. The statement "simply explicates one of the changes which occur between employers and employees when a statutory representative is selected," the Board said.

Members Johansen and Babson held that the employer unlawfully refused to bargain when it refused to recognize Delhagen as shop steward and refused to meet with him to discuss grievances. Member Dennis would not find that the employer violated the Act by refusing to deal with a union steward regarding grievances before a collective-bargaining agreement was signed.

Concerning alleged bad-faith bargaining, the judge found that "Respondent entered into bargaining with a fixed intention not to give the Union anything and that its contract proposals and utterly inflexible positions at the bargaining table are reflective of this and a closed mind."

(Members Dennis, Johansen and Babson participated.)

Charges filed by Glass Workers Local 1621; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing 14-15 October and 3 November 1982 at San Jose and Oakland. Adm. Law Judge Burton Litvack's decision issued 2 August 1983.

***

Ro-Lab Rubber Co., Inc. (32-CA-4569, 5143; 279 NLRB No. 57) Tracy, Calif. 22 April. The Board agreed with an administrative law judge's finding that the employer violated the Act by instituting and administering a harsher disciplinary policy after discovery of the Seafarers' organizing activity. It ordered expunction of all disciplinary warnings the employer imposed between 24 May and 6 August 1982, except for what were found to be legitimate warnings issued two employees.

Between May and August 1982, the employer violated the Act and interfered with a fair election by interrogating employees, threatening plant closure if employees secured union representation, theatening that it would never bargain with the union, and threatening loss of benefits if employees secured representation, the judge found. The 6 August 1982 election was set aside and a second one directed.

Dismissed was an allegation that the employer unlawfully discharged Erasmo Osorno. The Board said that the employer proved that it would have discharged Osorno for multiple incidents of negligence and unexcused absence even if there had been neither union activities by employees or an unlawful retaliatory general increase in discipline by the employer.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Seafarers, Petroleum and Industrial Workers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Oakland, 19-25 April 1983. Adm. Law Judge George Christensen's decision issued 22 March 1984.

***

Ventura County Star-Free Press (31-CA-13047; 279 NLRB No. 64) Ventura, Calif. 23 April. The Board affirmed an administrative law judge's dismissal of allegations that the employer violated the Act by unilaterally withholding step increases from editorial department employees who were qualified to receive such increases.

The judge found, and the Board agreed, that Graphic Communications Local 784 had waived any right it may have had to bargain over the employer's withholding those increases by failing to demand bargaining in timely fashion.

One issue raised by the employer involved the affiliation of the union which had been certified as representative of editorial department employees. The Ventura County Star Free Press Editorial Employees Association (EEA), which was the certified union, affiliated with the Printing and Graphic Communications Union in March 1982, becoming Local 784. In July 1983, the IPGCU merged with the Graphic Arts International Union to form the Graphic Communications International Union. The employer contended the affiliation between the IPGCU and GAIU did not comply with Board standards and that it therefore was not obliged to bargain with Local 784--a contention which the judge rejected.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Printing Specialties and Paper Products District Council 2; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Los Angeles on dates in April 1984 and April 1985. Adm. Law Judge Burton Litvack's decision issued 28 October.

***

Boise Cascade Corp., Paper Group (1-CA-22601; 279 NLRB No. 74) Rumford, Maine. 23 April. The Board agreed with an adminstrative law judge that the employer violated the Act by refusing to provide Paperworkers Local 900 with information the union requested concerning a maintenance efficiency program the company implemented at its Rumford facility.

The information the employer unlawfully refused to furnish included surveys used to formulate the maintenance improvement program and all studies on job definitions, projected cost savings, efficiency calculations, and a breakdown comparing maintenance efficiency and cost at the Rumford mill with other of the employer's papermaking installations.

In finding that the information the union sought was either presumptively relevant or that the union had demonstrated the relevance, the judge noted that the changes had impact on all the employees in the production and

maintenance unit.

The union was not entitled to information that constitutes a historical overview of prior negotiations or that reflects the employer's bargaining strategy on the maintenance improvement program, the judge found.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Paperworkers Local 900; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 13 June 1985. Adm. Law Judge William N. Cates' decision issued 10 October.

***

Precision Bulk Transport, Inc. (7-CA-21376; 279 NLRB No. 60) Caro and Fair Grove, Mich. 24 April. Contrary to an administrative law judge, the Board found that owner-operator truckdrivers hired by the company are independent contractors and not employees. It accordingly dismissed allegations that the employer unlawfully refused to bargain with Teamsters Local 486 as representative of the truckdrivers and interrogated a prospective employee about his union sentiments.

The Board held that the owner-operators are independent contractors because, it said, the employer has not retained the right to control the actual manner and means by which the owner-operators perform their services. It noted that the company does not exercise day-to-day supervision over the drivers' loading, unloading, and hauling activities; the drivers furnish their own tools and equipment, are responsible for acquiring licenses and insurances, and pay their own taxes; and the drivers purchase and own their own rigs, the purchase of which involves a substantial personal investment.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Teamsters Local 486; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Bay City, Mich., 25 April 1983. Adm. Law Judge Russell M. King Jr.'s decision issued 30 June 1983.

***

Borden, Inc., Chemical Division Thermoplastic Products (1-CA-22419; 279 NLRB No. 59) Boston, Mass. 22 April. The Board affirmed the decision of an administrative law judge that the employer violated the Act by demanding that Chemical Workers Local 553 agree to a proposal requiring employees whose jobs had been eliminated to sign a general release as a condition of consummating a severance agreement.

The judge found that the employer unlawfully insisted to impasse over a non-mandatory subject of bargaining: the general release. The judge held that there was not a sufficient nexus between the general issue of severance pay, a mandatory subject, and the issue of the release, "to inextricably intertwine the two subjects of bargaining."

While the Board agreed with the conclusion, it modified the judge's order which required the employer to enter into and execute the severance pay proposal, with the exception of the release provision, at the union's request. The Board provided "the standard Board remedy" for this particular violation, and ordered the employer, on the union's request, "to bargain over the pay issue without insisting on employee execution of a general release as a condition of agreement."

(Members Dennis, Babson and Stephens participated.)

Charges filed by Chemical Workers Local 553; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Boston, 15 April 1985. Adm. Law Judge Steven M. Charno's decision issued 6 September.

***

Steamship Trade Association of Baltimore, Inc. et al. (5-CA-14658, 5-RC-11705; 279 NLRB No. 45) Baltimore, Md. 21 April. On motion for summary judgment, the Board found unlawful the refusal of the Association and its members to bargain with Longshoremen ILA Local 953.

Following an election held 16 July 1982 to determine whether the employees in various unrepresented classifications wished to be included in the plant clerical unit already represented by the union, the union was certified to bargain for all cashiers, import clerks, truck loading clerks and window clerks who perform the plant clerical duties of preparation and/or credit computation of truck billing documentation, demurrage receipts, dock receipts and truck service tickets, cash collection and/or credit verification, employed by the stevedoring companies in the Port of Baltimore by the Steamship Trade Association of Baltimore.

Summary judgment was granted on a finding that all issues were or could have been litigated in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charge filed by Longshoremen ILA Local 953; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 4 February 1983.

***

McDonnell Aircraft Company (14-CA-18252; 279 NLRB No. 55) St. Louis, Mo. 21 April. Granting summary judgment, the Board found unlawful the employer's refusal to bargain with Teamsters Local 682, certified following an election victory as bargaining representative of all fire prevention/suppression specialists at the employer's St. Louis facility.

Summary judgment was granted on a finding that all issues were or could have been litigated in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 682; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 6 February 1986.

Peschke Corporation; Peschke Packing Company; and Peschke-Ohio, Inc. (7-CA-21121, 21286; 279 NLRB No. 58) Hamtramck and Detroit, Mich. and Coshocton, Ohio. 22 April. The Board granted the General Counsel's motion for summary judgment and ordered the employer to make whole its bargaining unit employees by payment to them of the respective amounts stated in the backpay specification.

The Regional Director had issued a backpay specification and notice of hearing on 1 August 1985 after a controversy arose over the amount of backpay due under the Board's Order of 31 October 1983, directing reimbursement for the losses caused by the employer's unlawful layoffs and denial of wage increases.

Since the employer did not file an answer or offer any explanation for its failure to do so, the Board found that the allegations in the backpay allegations are to be deemed to be admitted as true and therefore granted summary judgment.

(Members Dennis, Babson and Stephens participated.)

General Counsel's motion for default summary judgment filed December 1985.

***

Able Bus, Inc. (29-CA-10879; 279 NLRB No. 76) New York, N.Y. 24 April. Affirming an administrative law judge's decision, the Board dismissed allegations that the employer discharged Alfonse Maiella, in violation of the Act, because he ran for shop steward of Crafts and Industrial Workers Local 91.

The judge noted that the union shop steward election occurred more than three months before Maiella's discharge, and that Maiella was soundly defeated in the election. He concluded that the discharge was not motivated by the employer's desire to retaliate against Maiella's involvement in union activities, but came about as a result of management's good faith belief that Maiella breached a company safety rule.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Alfonse Maiella, Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at New York, 1 April 1985. Adm Law Judge Raymond P. Green's decision issued 20 November.

***

E G & G Florida, Inc. (12-CA-10811; 279 NLRB No. 65) Cocoa Beach, Fla. 24 April. The Board affirmed an administrative law judge's finding that the employer, as the successor to McGregor & Werner, Inc., violated the Act by changing terms and conditions of employment of documentation, reproduction and publication service employees without bargaining with Theatrical Stage Employees and Moving Picture Machine Operators Local 780.

The judge found that long before the employer completed hiring, it

made it "perfectly" clear that it intended to hire M & W employees. It also repeatedly promised to adopt the union contract, the judge said, even though it did not actually do so. He thus found that the employer indicated that M & W employees would be hired with no change, and failed to announce clearly any new conditions.

The judge pointed out that under the Board's holding in Spruce Up Corp., 209 NLRB 194, the employer could not mislead employees into believing that they would be retained with no change of their employment conditions or could not fail to clearly announce its intent to establish new conditions prior to hiring employees. Because the employer did not indicate a change, the bargaining obligation arose, the judge said.

(Members Johansen, Babson and Stephens participated.)

Charges filed by IATSE Local 780; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Cocoa Beach, 8-10 December 1983. Adm. Law Judge Benjamin Schlesinger's decision issued 25 May 1985.

***

Beck Corporation d/b/a Jessie Beck's Riverside Hotel and Casino (32-CA-118; 279 NLRB No. 61) Reno, Nev. 23 April. The Board affirmed an administrative law judge's finding that Overland, Inc. is a successor of Beck Corporation in the operation of the Riverside Hotel and Casino, and is liable to remedy the unfair labor practices found in the proceeding involving Beck, reported as Beck Corporation, 231 NLRB 907 (1977), and enforced by the Ninth Circuit 12 September 1979.

Agreeing with the conclusion, the Board found, however, that at the time the union requested recognition, Overland employed a substantial and representative complement of its work force, a majority of which had previously worked for Beck.

Accordingly, the Board held it need not rely on three factors relied on by the judge: (1) Overland's failure to recognize the union may have contributed to the departure of some of Beck's employees. (2) The unit was supplemented on and after 21 April 1978 with laid-off Overland employees who were also represented by the union when they were actively working. (3) Prior Overland employees and employees hired as result of the seasonal upturn or as replacements for employees who left for more desirable jobs are deemed to support the union in the same proportion as the employer's overall work force.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Hotel and Restaurant Employees Local 86; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Reno, 18 October 1982. Adm. Law Judge William L. Schmidt's decision issued 23 December 1982.

***

Alamo Cement Company (23-CA-9866; 279 NLRB No. 63) San Antonio, Tex. 25 April. The Board found the employer violated the Act by unilaterally implementing group health care insurance benefit changes without bargaining with Cement Workers Local 560.

The Board held that because the union had been properly certified since 8 September 1978, the employer was under a duty to bargain with the union in June 1984 when the employer altered the insurance.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Cement Workers and its Local 560; complaint alleged violation of the Act's Section 8(a)(1) and (5). Parties waived hearing before administrative law judge.

***

Quaker Rubber Company (4-CA-15421; 279 NLRB No. 86) Philadelphia, Penna. 23 April. In granting summary judgment, the Board found the employer violated the Act by refusing to bargain with Teamsters Local 115 from 17 October 1985, thereby prolonging a concerted work stoppage and strike which started 28 June 1985.

In light of the employer's failure to show good cause for its failure to file a timely answer, the Board granted the General Counsel's summary judgment motion, ordering the employer to offer full and immediate reinstatement to striking employees to their former or substantially equivalent positions, upon their unconditional application for reinstatement.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 115; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 16 January 1986.

***

The Clarion Hotel-Marin; Colorado Marin Associates, A Joint Venture; and Preferred Properties Fund 82, A Limited Partnership (20-CA-19106, 19119; 279 NLRB No. 70) San Rafael, Calif. 25 April. The Board agreed with an administrative law judge that the hotel operator violated the Act by refusing to bargain with Freight Checkers, Clerical Employees and Helpers Locals 856 and 126 on assuming ownership of the hotel facility in San Rafael; by issuing warnings to six employees in retaliation for protected activity; and by constructively demoting an employee for resisting a demand that she refrain from protected union activity.

The employer argued that it was not a successor to the hotel's previous owner and that it therefore was not obligated to bargain with the union representing the historical bargaining units. The judge found that the employer on taking over the hotel continued to employ the same workforce,which it used to conduct the same business without interruption. He thus held that the employer was a successor employer and was obligated to bargain with the union on the

union's request.

Six employees were issued warnings for picketing in their uniforms, the judge said. In holding that the warnings were unlawful, the judge found that the employer failed to establish that it had a pre-existing rule prohibiting employees from engaging in outside activities while in uniform.

Other unfair labor practices found included threats and suggestions to employees that it would be futile to continue support for Locals 126 and 856.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Freight Checkers, Clerical Employees and Helpers Locals 126 and 856; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at San Francisco, 28-30 January 1985. Adm. Law Judge William L. Schmidt's decision issued 4 October.

***

Century Assets (AO-253; 279 NLRB No. 83) Bronx, N.Y. 25 April. The Board said that it was unable to conclude whether it would assert jurisdiction over the real estate company.

The petitioner failed to identify whether its ventures are commercial office buildings, residential apartment buildings, some other venture, or a combination of the same. The Board, however, has different jurisdictional standards for different "real estate" operations. Thus, on the information before it--the only description given of the general nature of the business was real estate--the Board was unable to make a meaningful determination whether the employer would meet the Board jurisdictional standards.

(Chairman Dotson and Members Johansen, Babson and Stephens participated.)

***

Morrison-Knudsen Company, Inc., Brown and Root, Inc., and Martin K. Eby ConstructionCo., Inc. A Joint Venture Known as Tenn-Tom Constructors (26-CA-9964; 279 NLRB No. 68) Iuka, Miss. 25 April. The Board remanded the proceeding to the administrative law judge to resolve material factual disputes regarding allegations that employees were unlawfully disciplined for assisting a labor organization.

The judge had dismissed allegations that the employer threatened retaliation and promised benefits to various employees to influence their votes on charges of Operating Engineers Local 624 against foreman George McCain, and after the trial disciplined an employee for participating in the internal union proceeding.

The judge had found it unnecessary to resolve certain factual disputes because he found employee participation in union disciplinary proceedings against McCain was unprotected.

The judge reasoned that the union disciplinary proceedings violated the Act, and that such unlawful concerted activity could not be protected by the Act.

Disagreeing with that rationale, Chairman Dotson and Member Dennis pointed out that the employer has remedies available to it through the Board if the union commits unfair labor practices. Given those remedies, the Board said, it would be unfair to allow an employer to retaliate against rank-and-file employees who relied on their statutory representative to resolve legitimate grievances, when that representative attempted to discharge its duties by unlawful means.

Member Johansen, concurring and dissenting, would overrule Bovee & Crail Construction Co., 224 NLRB 509 (1976) on the grounds that it "allows an employer to call an employee to account as an employee for assisting a labor organization." He agreed it was necessary to remand the case.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Operating Engineers Local 624; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Tupelo, on dates in February 1983. Adm. Law Judge Philip McLeod's decision issued 16 July 1983.

***

Graphic Communications Local 582 (5-CB-4987; 279 NLRB No. 80) Glen Burnie, Md. 25 April. The Board agreed with an administrative law judge's finding that the union illegally restrained and coerced Alco Gravure, Inc. in the selection and retention of supervisor Leonard Lewis Stoops as its representative for collective bargaining or the adjustment of grievances.

The controversy arose after the union filed a grievance alleging Stoops, a union member, had performed bargaining unit work in violation of the contract. Stoops argued he performed the necessary work on a weekend, and only after failing to find volunteers from the bargaining unit.

Specifically, the judge found the union violated the Act by (1) requesting Stoops to appear before the union executive committee in order to explain his conduct, (2) imposing a fine against Stoops for his actions deemed a violation of union rules and contract provisions, and (3) by threatening Stoops with loss of his union card or other disciplinary action.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Alco Gravure, Inc.; complaint alleged violation of the Act's Section 8(b)(1)(B). Hearing at Baltimore, 29 July 1985. Adm. Law Judge James J. O'Meara's decision issued 30 December 1985.

Ne Di Construction Co., Inc. (5-CA-15680; 279 NLRB No. 71) Henrico County, Va. 25 April. The Board agreed with an administrative law judge that the employer violated the Act by unilaterally changing terms and conditions of employment midterm of its contract with the Eastern District Council of Carpenters. The employer further violated the Act by bypassing the union and dealing directly with employees, it was found.

The parties signed an Acceptance of Agreement on 30 May 1980, binding the employer to the master contract between the union and the Virginia Association of Contractors. That agreement was to remain in effect unless either party gave notice of a desire to terminate 120-150 days prior to April 30, 1983, the scheduled expiration date of the master contract. The employer contended that a letter it wrote dated 17 January 1983, although falling outside the stated time frame, constituted a notice of termination, and that the union waived its right to timely notice.

The judge found, and the Board agreed, that the 17 January letter was not a letter of termination. The Board added that even assuming the letter was a notice of termination, the union did not waive its right to timely notice. It noted the union sought an immediate explanation of the employer's letter and then consistently and forcefully resisted what it considered to be an attempt to withdraw recognition from the union.

The Board thus held that the employer was bound to the master agreement.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by the Eastern District Council of Carpenters; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 6 December 1983 at Richmond. Adm. Law Judge Lowell Goerlich's decision issued 22 February 1984.

***

O.K. Machine & Tool Corp. and Gyrotronics, Inc. (2-CA-16004, et al.; 279 NLRB No. 69) Bronx, N.Y. 25 April. In this supplemental proceeding, the Board directed the employer to make whole five employees for losses suffered through discrimination against them (251 NLRB 208 (1980)). In addition, the employer is to transmit backpay to the Regional Director, to be held in escrow for a sixth discriminatee who did not appear at the hearing.

Since the discriminatees no longer work for the company, having rejected reinstatement, the judge ordered the employer to pay pension fund contributions directly to the discriminatees rather than to the pension fund. The Board disagreed, noting there were no circumstances warranting departure from the Board's customary procedure of ordering that the contributions be paid to the pension fund.

William Robinson, a discriminatee residing in California, was served a subpoena but lacked the funds to make the trip for the hearing. The judge found no reason why witness fees and mileage should not have been paid, and he thus held that the subpoena was invalid since there was no tender of the appropriate fees.

He ordered the employer to transmit the backpay due Robinson to the Regional Director for Region 2.

(Chairman Dotson and Members Dennis and Babson participated.)

Supplemental hearing at New York on dates in February, April, June, July and September 1983; Adm. Law Judge D. Barry Morris' supplemental decision issued 24 July 1984.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Americare Convalescent Center (Health Care Employees District 1199M), Detroit, Mich. 17 April. 7-CA-24086; JD-105-86, Walter J. Alprin, Adm. Law Judge

Carpenters District Council of Greater St. Louis (Rinker and Yocham Construction) (Barnett Range Corp.), St. Louis, Mo. 18 April. 14-CC-1823; JD-107-86, Richard L. Denison, Adm. Law Judge

Emhart Industries, Hartford Division (Auto Workers Local 376), Bloomfield, Conn. 18 April. 39-CA-1642; JD-102-86, Wallace H. Nations, Adm. Law Judge

E. G. & G. Florida, Inc. (Transport Workers and its Local 525), Kennedy Space Center, Fla. 18 April. 12-CA-10881; JD-108-86, Walter H. Maloney, Jr., Adm. Law Judge

Consumers Asphalt & Concrete Co. and Buchanan Asphalt and John J. Kinney, III (Teamsters Local 7 and Operating Engineers Local 324), Benton Harbor, Mich. 18 April. 7-CA-20916, et al.; JD-98-86, Wallace H. Nations, Adm. Law Judge

Midtown Service Center, Inc. (Individual), Atlanta, Ga. 21 April. 10-CA-19120; JD-(ATL)-28-86, Hutton S. Brandon, Adm. Law Judge

Ashe Brick Company (Aluminum, Brick and Glass Workers Local 904), Van Wyck, S.C. 21 April. 11-CA-11839; JD-(ATL)-34-86, William N. Cates, Adm. Law Judge

Mine Workers Local 9639 (Beth-Elkhorn Corp.) and Local 541 (Individual), Letcher County, Ky. 22 April. 9-CB-4482; JD-(ATL)-33-86, Hutton S. Brandon, Adm. Law Judge

Hoytuck Corp. (Individual), Tulsa, Okla. 23 April. 16-CA-12418; JD-(ATL)-27-86, Hutton S. Brandon, Adm. Law Judge

Chipmore Mfg. Co., Inc.; Badger Chipper Co.; and Sidefire International, Inc.; a single employer (Steelworkers and Individual), Bay City, Mich. 23 April. 7-CA-23574, 23956; JD-100-86, Bruce C. Nasdor, Adm. Law Judge

Teamsters Local 42 (J.W. Daly, Inc.) (Individual), Lynnfield and Lawrence, Mass. 23 April. 1-CB-6176; JD-109-86, Arline Pacht, Adm. Law Judge

Parkview Furniture Mfg. Co. and Parkview Occasional Seating (Upholsterers Local 15 Joint Board and UIU Health and Welfare Fund; UIU Pension Trust, Express Trusts), Compton, Calif. 23 April. 21-CA-22499, et al.; JD-(NY)-32-86, Jesse Kleiman, Adm. Law Judge

Northwind Maintenance and Painting Co., Inc. (Service Employees Local 32E), New York City, N.Y. 24 April. 29-CA-11681; JD-(NY)-30-86, James F. Morton, Adm. Law Judge

Special Touch Interiors, Inc. (Individual and Painters Union Insurance Fund; Pension Fund; and Vacation Fund), Detroit, Mich. 24 April. 7-CA-24794, 24891; JD-101-86, Thomas R. Wilks, Adm. Law Judge

Nicholas, Inc. and Nicholas, Inc., debtor in possession (Individual), Avenel, N.J. 24 April. 22-CA-13332; JD-(NY)-31-86, Julius Cohn, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Distron, A Div. of Burger King Corp. (1-RC-18684), Oxford, Mass. 21 April. Full-time and regular part-time drivers, yardmen, warehousemen, casual warehousemen, and plant clerical employees shall vote for representation by Teamsters Local 170, or for no representation.

Jarabek Disposal, Inc.; J. J. Stevens, Inc.; and Express Waste Systems, Inc. (1-RC-18686), Fall River, Mass. 21 April. Full-time and regular part-time production and maintenance employees including truck drivers, helpers, heavy equipment operators, mechanics, pickers, dispatchers and laborers shall vote for representation by Teamsters Local 526, or for no representation.

Rapid Bus Co. (13-RC-16859), Chicago, Ill. 16 April. Bus drivers shall vote for representation by Teamsters Local 710, or for no representation.

Rustman Bus Co., Inc. (14-RC-10082), St. Louis County and St. Charles County, Mo. 9 April. Drivers, lot personnel, mechanics and utility men shall vote for representation by Teamsters Local 610, or for no representation.

High-Key Distributing, A Div. of House of Kitchens, Inc. (18-RC-13932), Sioux City, Iowa. 21 April. Full-time and regular part-time production and maintenance employees shall vote for representation by Carpenters Local 948, or for no representation

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2015

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

28 APRIL - 2 MAY 1986 (W-2015)

NEWARK PUBLIC LIBRARY
MAY 21 1986
U. S. GOVT. PUBS.
DEPOSITORY 378

CASES SUMMARIZED

Austin Cablevision	Austin, Tex.	3
Beckley Belt Services & Roofing	Mt. Hope, W. Va.	2
C--D Investment and Carpenters	Los Angeles, Cal.	6
Can-Do, Inc.	Roseville, Mich.	12
Carpenters Local 608	New York, N. Y.	13
Congreso de Uniones Industriales	Guaynabo, P. R.	3
Coppinger Machinery Service	Cincinnati, Ohio	1
Dreyers Grand Ice Cream	Kent, Wash.	11
Electrical Workers (IBEW) Local 3	New York, N. Y.	5
Fashion Furniture Mfg.	Cerritos, Cal.	9
15th Avenue Iron Works	Brooklyn, N. Y.	5
Grand Rapids Die Casting Corp.	Grand Rapids, Mich.	6
Hacienda Hotel and Casino	Las Vegas, Nev.	2

LR 1.15/2:

Hoschton Garment Co.	Hoschton, Ga.	4
Institute of Technical Careers	Cincinnati, Ohio	12
Joey's Stables	Detroit, Mich.	8
Jo-Vin Dress Company	Shenandoah, Pa.	2
Lone Star Industries	Richmond, Va.	7
Marine and Shipbuilding Workers	San Pedro, Cal.	10
Mediterranean Lounge	Philadelphia, Pa.	1
Morco Industries, Inc.	Tampa, Fla.	11
Star Color Plate Service	Jamaica, N. Y.	8
Stop-N-Go Foods	Englewood, Ohio	12
Strassburger, Inc. and B & P Truck	Sioux City, Iowa	5
Teamsters Local 710	Chicago, Ill.	10
Van Leer Containers	Canton, Miss.	8

OTHER CONTENTS

List of Decisions of Administrative Law Judges 14

List of Directions of Elections by Regional Directors 15

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Coppinger Machinery Service, Inc. (9-CA-21202; 279 NLRB No. 85) Cincinnati, O. 28 April. The Board reversed an administrative law judge's findings that the employer unlawfully dominated the formation of the Coppinger Machinery Service Employees Organization and gave assistance and support to that union.

The Board found that the issue of the employer's purported domination in the formation of CMSEO was not properly before the Board because the matter was not raised in the complaint, the matter was not put in issue at the hearing, and the General Counsel and the judge effectively assured the Respondent that "establishment" was not to be litigated. It accordingly found that the matter was not fully litigated and reversed findings of violation.

The complaint had alleged five specific instances of unlawful aid, including paying negotiating committee members for time spent negotiating an agreement and informing employees of impending union committee meetings. In dismissing the allegations, the Board held that, in the absence of probative evidence demonstrating the absence of an arm's-length relationship between employer and union, properly litigated at the hearing, it could only construe the employer activities alleged to be unlawful as "cooperation of a ministerial character growing out of an amicable labor-management relationship."

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Iron Workers Local 715; complaint alleged violation of the Act's Section 8(a)(1) and (2). Hearing 5-6 March 1985 at Middlesboro, Ky. Adm. Law Judge David L. Evans' decision issued 16 August.

***

Mediterranean Diner, Inc., t/a Bay Diner, Inc., and New Bay Diner, Inc., t/a Mediterranean Lounge (4-CA-9831, et al.; 279 NLRB No. 77) Philadelphia, Pa. 28 April. The Board agreed with an administrative law judge's determination that New Bay as a successor to Bay Diner violated the Act by refusing to bargain with Hotel and Restaurant Employees Local 54.

The Board noted that Bay Diner, both before and during the union's certification year, committed numerous unfair labor practices. Because of these unremedied unfair labor practices, Bay Diner, at the time of the New Bay takover, was foreclosed from challenging the union's majority status and remained obligated to bargain with the union, the Board said. It held that, because New Bay stands in the shoes of Bay Diner vis-a-vis the union, the same obligation to bargain devolved upon New Bay, a successor employing all of Bay Diner's employees and having full knowledge of Bay Diner's unremedied unfair labor practices. By ignoring a union demand for bargaining, New Bay violated the Act, the Board held.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 54; complaint alleged violation of the Act's Sectio 8(a)(1) and (5). Supplemental hearing at Philadelphia, 1 December 1981. Adm. Law Judge Frank H. Itkin's supplemental

decision issued 18 May 1983.

***

Hacienda Hotel and Casino (31-CA-10521, et al.; 279 NLRB No. 84) Las Vegas, Nev. 28 April. Affirming an administrative law judge's decision, the Board directed the employer to pay $81,529.56 to Willow Bowe and $1630.85 to the Southern Nevada Culinary and Bartenders Pension Trust, to be credited to Bowe's pension account.

In a 1982 decision and order (264 NLRB 656), the Board found that the employer unlawfully discharged Bowe on 28 May 1980; after rehiring her made discriminatory changes in her work conditions between 1 December and 24 December 1980; and discharged her again on 24 December 1980, in violation of the Act. The backpay period extended from 1980 to 1984.

(Chairman Dotson and Members Dennis and Johansen participated.)

Supplemental hearing 10-11 January 1985. Adm. Law Judge James S. Jenson's supplemental decision issued 23 May.

***

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. (4-CA-13183; 279 NLRB No. 73), Shenandoah, Pa. 28 April. The Board affirmed an administrative law judge's decision that the employer violated the Act by refusing to bargain with Ladies Garment Workers Local 185 and by refusing to apply its collective bargaining agreement with the union, by unilaterally changing terms and conditions of employment midterm of a contract, and by constructively discharging 23 employees who refused to continue to work after being told the shop would operate nonunion.

The judge found that Villa Fashions was created as a "sham and a coverup" to allow the employer to operate Jo-Vin nonunion, repudiate its bargaining obligation with the union, and avoid future payments into the health and welfare fund to which it was obligated to make payment. He held that Villa was a disguised continuance and alter ego of Jo-Vin.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Ladies' Garment Workers Local 185; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing 25-26 June 1984 at Hazelton. Adm. Law Judge Lowell Goerlich's decision issued 24 September 1984.

***

Beckley Belt Services & Roofing Co., Inc. (9-CA-20653; 279 NLRB No. 66) Mt. Hope, W. Va. 28 April. The Board affirmed an administrative law judge's decision that the Employer violated the Act by utilizing nonunion employees to perform unit

employees' work, by discriminatorily laying off union employees because they complained and filed a grievance over the matter, and by repudiating provisions in its contract with Mine Workers District 29 relating to wages, benefits, and the grievance arbitration procedure.

The Board held that an order requiring the company to cooperate in the processing of the grievance, proceeding to speedy arbitration if necessary, was appropriate given the employer's unlawful refusal to process the grievance in derogation of the collective-bargaining agreement.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Mine Workers District 29; complaint alleged violation of the Act's Section 8(a)(1),(3), and (5). Hearing at Beckley, 22 May 1984. Adm. Law Judge Elbert D. Gadsden's decision issued 28 August 1984.

***

Austin Cablevision (23-UC-126; 279 NLRB No. 75) Austin, Tex. 28 April. Contrary to an Acting Regional Director, the Board found that salesclerks share a sufficient community of interest with unit office clericals to be included in an existing clerical unit represented by the Communications Workers. It also reversed his finding that the unit clarification petition filed by the union should be dismissed.

The Acting Regional Director had found the petition inappropriate on the ground that the salesclerk position existed prior to the parties' entering into their bargaining agreement, and that the position had been excluded for over two years. Reversing the Acting Regional Director on this issue, the Board found that salesclerks have not been contractually excluded and that the union did not waive its right to represent the sales clerks by failing to secure their inclusion in the bargaining agreement.

Concerning the community of interest, the Board found that salesclerks' functions were integrated with those of other clericals.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

Congreso de Uniones Industriales de Puerto Rico (24-CB-1270; 279 NLRB No. 88) Guaynabo, P.R. 29 April. The Board affirmed an administrative law judge's decision that the union violated the Act through the conduct of one of its pickets who threatened to physically attack, and did attack, an employee wo was about to cross a union picket line to work for the Rice Growers Association of California (P.R.), Inc.

The judge found that the picket captain had observed actions by picketer Gilberto Oquendo, including his approaching vehicles with a rock and a

bottle in hand, but took no action to restrain Oquendo. By its acquiscence in maintaining Oquendo a a picket and by not in any manner repudiating his conduct, the union silently adopted and approved of that violence, the judge concluded. He said the union "must therefore be held accountable for the violent conduct of picket Oquendo."

(Members Dennis, Babson and Stephens participated.)

Charges filed by Isabelo Rosario, an Individual; complaint alleged violation of the Act's Section 8(b)1)(A). Hearing at Hato Rey 20 June 1985. Adm. Law Judge Thomas R. Wilks' decision issued 26 September.

***

Hoschton Garment Company, A Subsidiary of Spencer Industries, Inc. (10-CA-18618, 18741; 279 NLRB No. 81) Hoschton, Ga. 28 April. Chairman Dotson and Members Dennis, Johansen and Stephens, with Member Babson concurring, held that the employer did not violate the Act by attempting to prevent the Ladies' Garment Workers from distributing handbills to employees while the union was trespassing on company property at driveway entrances A and B. At another entrance, it was found, the company did engage in unlawful surveillance and attempts to restrict handbilling.

The question with regard to entrances A and B, the Board said, was whether the employer, while acting lawfully in attempting to evict trespassers, nevertheless acted unlawfully in observing their trespassory activities. It noted that the attempts to evict the trespassing union representatives were the exercise of a legitimate proprietary prerogative, and it concluded that management officials' remaining at the entrances while union representatives distributed handbills was "part and parcel of their permissible effort to evict (the union representatives) from company property."

Member Babson did not concur entirely in the analysis set forth by his colleagues with respect to the surveillance issues, but he agreed that the company agents' conduct at entrances A and B was lawful and that their conduct at entrance C was unlawful. The surveillance at entrance C, he said, was inextricably entwined with an unlawful attempt to prohibit handbilling on public property.

(Full Board participated)

Charges filed by the Ladies' Garment Workers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Atlanta, 14-15 July 1983. Adm. Law Judge Hutton S. Brandon's decision issued 13 September 1983.

***

F. Strassburger, Inc. and B & P Trucking, Inc. (18-CA-8925, 9080; 279 NLRB No. 92) Sioux City, Iowa. 30 April. The Board affirmed an administrative law judge's decision that the two companies, which the judge concluded were a single employer, violated the Act by refusing to recognize and bargain with Teamsters Local 544 and by closing B & P Trucking and discharging all of B & P's employees because of their activities for the union.

The Board agreed with the judge that a bargaining order was necessary to protect employee sentiment expressed when 11 of 15 employees signed union authorization cards. In addition to closing B & P and laying off all its employees, the employer committed "highly coercive" violations by threating closure and unlawfully discharging the employees' appointed spokesperson, the Board said. It noted that such highly coercive unfair labor practices are likely to have a lasting effect on election conditions, particularly because the violations directly affected all unit employees and emanated from high-level management officials.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Individual and Teamsters Local 544; complaint alleged violation of the Act's Section 8(a)(1),(3) and (5). Hearing 14-15 May at Sioux City. Adm. Law Judge Michael O. Miller's decision issued 27 August.

***

Electrical Workers (IBEW) Local 3 (2-CD-712; 279 NLRB No. 72) New York, N.Y. 28 April. The Board awarded the installation of electrical conduit, cable, devices and fixtures on a renovation job to employees of Mike G. Electric Corp, who are represented by Food and Commercial Workers Local 150, and not to workers represented by IBEW Local 3.

The Board based its award on the employer's collective-bargaining agreement with Local 150, the employer's preferences and past practices, the comparative expertise of the employer's current workforce, and the efficiency advantages of retaining a work force which had completed a substantial part of the work.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

15th Avenue Iron Works, Inc. and Aritat Builders and Management Corp. (29-CA-10125. et al.; 279 NLRB No. 91) Brooklyn, N.Y. 29 April. The Board agreed with a administrative law judge's findings that the employer unlawfully discharged five employees because they supported Iron Workers Local 455 or gave testimony before the Board; refused to bargain with the union; and interrogated and threatened employees as part of a course of action to defeat the union.

The judge found that the employer refused to supply the union with information concerning unit employees and their wages and benefits, despite the company's repeated promises to do so. It also cancelled five bargaining sessions and withdrew all its proposals when the union filed new charges against the company, the judge said. He thus concluded that the employer's entire course of action indicated a lack of good faith desire to arrive at a final agreement with the union.

The Board noted that the employer's exceptions to the judge's findings were not timely filed, the exceptions not having been posted until the day after the date set for filing exceptions. It thus deemed that the exceptions were waived.

(CHairman Dotson and Members Dennis and Babson participated.)

Charges filed by Iron Workers Local 455; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Brooklyn on dates in October and December 1983 amd March and April 1984. Adm. Law Judge Steven Davis' decision issued 29 November 1984.

***

Grand Rapids Die Casting Corp. (7-CA-22956; 279 NLRB No. 93) Grand Rapids, Mich 29 April. Agreeing with an administrative law judge, the Board held that the employer violated the Act by threatening and then discharging Sheilla Washington because she engaged in union and other protected concerted activities and because she stated her intention to file a charge with the Board.

Washington was unlawfully discharged, the judge found, because she processed grievances on her own behalf and because, in her capacity as Auto Workers Local 159 steward, she investigated another employee's grievance. He found no merit to the employer's contention that it discharged Washington for refusing an order to return to work.

(Members Dennis, Johansen and Stephens participate.)

Charges filed by Individuals; complaint alleged violation of the Act's Section 8(a)(1), (3), and (4). Hearing at Grand Rapids 9-11 May 1984. Adm. Law Judge Michael O. Miller's decision issued 12 October 1984.

***

C--D Investment Co. and Los Angeles District Council of Carpenters (31-CA-11931, 31-CB-4505, 4552; 279 NLRB No. 90) Los Angeles, Calif. 29 April. The Board affirmed an administrative law judge's dismissal of allegations that the union violated the Act by causing C--D to discharge Robert Dale because Dale had replaced other employees as union steward. Also dismissed was an allegation that the employer unlawfully discharged Dale.

Kenneth Scott, union secretary-treasurer and assistant business representative, had referred Dale to a C-D jobsite without following hiring hall dispatch procedures, replacing two stewards at the jobsite. The judge found that Dale and Scott were acting primarily to advance their own union political interests rather than out of concern for the welfare of Local 25. Therefore, he held, the District Council was acting for the benefit of its membership when it caused the discharge of Dale and reinstated the two stewards.

For the same reasons, the judge found that C--D did not violate the Act by discharging Dale.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Individuals; complaint alleged violation of the Act's Section 8(b)(1)(A), 8(b)(1)(B), 8(b)(2), and 8(a)(1) and (3). Hearing on dates in January, February, March and July 1983. Adm. Law Judge Michael D. Stevenson's decision issued 19 December 1983.

***

Lone Star Industries, Inc. (5-CA-12015; 279 NLRB No. 78) Richmond, Va. 28 April. The Board found that the employer violated the Act when, following an economic strike, it changed its work assignment policy by eliminating seniority as a factor; and when it classified certain strikers as having obtained "comparable employment" elsewhere and consequently disqualified them from eligibility for reinstatement.

The Board noted that for 23 years, it was the company's policy to assign work, including overtime, on the basis of seniority. One month after a strike called by Teamsters Locals 822 and 592 began, the employer changed to a system that eliminated entirely the factor of seniority. In finding a violation, the Board focused on the message that this change in policy implicitly conveyed to employees with respect to the price of engaging in the protected concerted activity of striking: what employees witnessed, it said, was the abandonment, while they were out on strike, of a policy of 23 years' standing that gave them economic avantages over later-hired employees, such as strike replacements.

The only criteria the employer used to determine whether employment obtained by former strikers was comparable was whether the employee was employed in the "same type of job, with a competitor," the Board noted. It held that the employer violated the Act by disqualifying for reinstatement those employees it deemed on the basis of insufficient information to have obtained comparable employment.

(Members Dennis, Johansen and Stephens participated.)

Charges filed by Teamsters Locals 822 and 592; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Richmond, 9-10 February 1981. Adm. Law Judge Elbert D. Gadsden's decision issued 30 June 1982.

***

Joey's Stables (7-CA-23850; 279 NLRB No. 97) Detroit, Mich. 30 April. Affirming an administrative law judge's decision, the Board found that the employer violated the Act by ending employees' group insurance coverage and instituting a different coverage, without bargaining with Hotel and Restaurant Employees Local 24.

The employer admitted that it changed insurance coverage without bargaining with the union, but it argued that its action was lawful because the employer and the union were at impasse at the time the employer acted and because the union waived its right to bargain. The jduge, however, found that the parties were not at impasse. He held that the employer was obligated to notify the union prior to implementation of the new insurance, and that the employer violated the Act by not doing so.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Hotel and Restaurant Employees Local 24; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Detroit, 25-27 February 1985. Adm. Law Judge Stephen J. Gross' decision issued 16 December

***

Van Leer Containers, Inc. (15-CA-9720; 279 NLRB No. 79) Canton, Miss. 30 April Chairman Dotson and Member Babson granted summary judgment and held that the employer violated the Act by refusing to bargain with the Steelworkers and by refusing to provide the union with information concerning unit employees.

Member Dennis dissented. In the underlying representation proceeding she found, contrary to the majority, that a hearing was warranted on one of the employer's election objections. She would thus deny summary judgment.

The panel majority granted summary judgment on a finding that no issues were raised which were not, or could not have been, raised in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by the Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 29 August 1985.

***

Star Color Plate Service, Div. of Einhorn Enterprises, Inc. (29-CA-8280, et al., 29-RC-5121; 279 NLRB No. 82) Jamaica, N.Y. 28 April The Board affirmed an administrative law judge's decision that the employer unlawfully laid off two union adherents, subjected its employees to more onerous work conditions by engaging in stricter supervision and by withdrawing certain privileges previously enjoyed by them,and augmented its workforce to dilute Typographical Local 1's support among the company's employees.

The judge found that after the union began an organizing drive, the employer sought every means at its disposal to deprive unit employees of representaton. Thus, he said, the hiring of six employees in October and November 1980 was an attempt to "pack the unit" to insure that the union would not be successful in its efforts. Active union adherents Steven Moss and Fred Becker were abruptly laid off, in violation of the Act, after the union advised the employer of their role, the judge concluded.

The Board additionally held that the employer violated the Act when a clerical employee, who it concluded was an agent of the company, solicited emplyee support for Teamsters Local 363, which intervened in the representation proceeding.

The Board certified Typographical Local 1 as the representative of lithographic production employees.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Typographical Local 1; complaint alleged violation of the Act's Section 8(a)(1),(3), and (4). Hearing on dates in July and December 1981 and January 1982 at Brooklyn. Adm. Law Judge Thomas T. Trunkes' decision issued 17 March 1983.

***

Fashion Furniture Mfg., Inc. (21-CA-22652; 279 NLRB No. 95) Cerritos, Calif. 30 April. Contrary to an administrative law judge, the Board found that the employer unlawfully refused to sign an agreement it reached with Upholsterers Local 15.

The judge, in finding no violation, had concluded that there was a condition precedent to executing the contact that was not satisfied: inclusion of a provision regarding the employer's arrearages in health and welfare and pension payments required under the previous contract.

The Board noted that the employer did not indicate, at the time the parties reached agreement, that the agreement was conditioned on inclusion of a provision on arrearages. Consequently, the absence of the provision did not excuse the employer's refusal to sign the agreed-upon contact, the Board held.

Having found that the Employer unlawfully refused to sign the contract, the Board further found that the employer's subsequent failure to implement increases in wages and health and welfare payments required under the contract and its failure to withhold and remit dues to the union, also required under the contract, constituted additional violations of the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Upholsterers Local 15; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 1 and 2 November and 17-18 December 1984 at Los Angeles, Calif. Adm. Law Judge Joan Weider's decision issued 25 June 1985.

Teamsters Local 710 (13-CP-500, 502; 279 NLRB No. 96) Chicago, Ill. 30 April. The Board concurred with an administrative law judge's decision that the union unlawfully picketed the Chicago terminal of Santa Fe Trail Transportation Company for more than 30 days, in support of a demand for recognition, when Santa Fe had lawfully recognized and had a contract with another union.

After Santa Fe purchased BN Transportation and closed BNT's Chicago terminal, Local 710 demanded that Santa Fe hire all eight of BNT's office clericals and appply the Local 710 contract to them. Santa Fe responded that the Brotherhood of Railway, Airline, and Steamship Clerks (BRAC) represented its office employees and that any BNT employees hired would be part of that unit.

The union contended that its picketing was not unlawful because, it argued, Local 710 was the bargaining representative of the BNT employees inasmuch as Santa Fe was their successor employer. The judge, however, said that even if Santa Fe was a successor employer, picketing for a recognitional object beyond 30 days is prohibited, unless a valid representation petition is filed. The union's petition was dismissed as having no merit and the Board upheld the dismissal, he pointed out.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Jack P. Cerone, Attorney; complaint alleged violation of the Act's Section 8(b)(7)(A) and (C). Hearing at Chicago, 25-26 March 1985. Adm. Law Judge Richard J. Linton's decision issued 30 July.

***

Marine and Shipbuilding Workers Local 9 (21-CB-8886; 279 NLRB No. 87) San Pedro, Calif. 29 April. The Board found that the union unlawfully caused John Bencomo's resignation from his position as leadman, and caused Todd Pacific Shipyards to transfer and demote Bencomo, to punish Bencomo for properly serving in his role as leadman.

Bencomo became involved in an argument with a union member in the course of carrying out his leadman's duty of seeing that employees moved in a timely fashion from one ship to another.

Concerning Bencomo's decision to resign as leadman, the Board did not find, as did an administrative law judge, that Bencomo's relinquishment of his leadman position was a voluntary, uncoerced act. It noted that the continued unlawful retaliatory pressure on Todd Pacific and on Bencomo was consistent with the repeatedly stated purpose of union agents not only to effect Bencomo's transfer, but to deprive him of his leadman's position. In light of such unrelenting presssure, the resignation was not a truly voluntary act, the Board held.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by John R. Bencomo, an Individual; complaint alleged

violation of the Act's Section 8(b)(1)(A) and (2). Hearing at Los Angeles, Calif. 23 October 1984 and 22 January 1985. Adm. Law Judge Richard J. Boyce's decision issued 31 October.

***

Morco Industries, Inc. and All Southern Fabricators, A Div. of Morco Industries, Inc. (12-CA-9065; 279 NLRB No. 100) Tampa, Fla. 30 April. Reversing a finding in a 1981 decision and order (255 NLRB 146), the Board held that the Employer did not violate the Act by transferring work from its Pinellas Park, Florida, plant to its Long Beach, Mississippi plant without bargaining with Sheet Metal Workers Local 57 over its decision.

The Board relied on Otis Elevator, 269 NLRB 891 (1984), in which it held that where a decision turns on a change in the scope, nature, or direction of a significant facet of the enterprise, the Act does not impose an obligation to bargain. Here, it found, the decision to transfer work turned entirely on the need to expand the company's metal fabrication facilities, an expansion which involved a change in the nature and scope of this facet of the enterprise. The Board also noted that the employer did not seek to undermine the status of the union or to escape the labor costs embodied in its labor contract.

Member Dennis relied on the analysis in her separate opinion in Otis. The decision, she said, was outside union control.

A violation was found in the employer's refusal to discuss the effects of its transfer decision on unit employees with the union.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

Dreyers Grand Ice Cream Northwest (19-RC-11210; 279 NLRB No. 107) Kent, Wash. 30 April. Chairman Dotson and Member Babson found that the employer interfered with a 2 July 1985 representation election when a supervisor made statements to the effect that, if the union lost, prounion employees might be discharged. Member Johansen, dissenting, would not find any objectionable conduct.

Despite assurances by the company's president that he would not retaliate against employees ,Tom Burns, a supervisor who supported the union, told employees he did not trust other management officials--including company vice president John Graham. His statement fueled fears that if the union lost the election prounion employees would be discharged, the Board panel majority said.

Chairman Dotson and Member Babson accordingly overruled the election and directed a second one.

Member Johansen would find that Burns' prediction of retaliation was Burns' opinion, and not a threat. He would certify Teamsters Local 174 as

repesentative of employees.

(Chairman Dotson and Members Johansen and Babson participated.)

***

Institute of Technical Careers, Inc.; Arthur J. Schuh, Trustee in Bankruptcy (9-CA-18901; 279 NLRB No. 105) Cincinnati, Ohio. 30 April Granting summary judgment, the Board held that the employer violated the Act by discharging Sharon Joyce because she expressed her own and other employees' dissatisfaction with working conditions in conversations she had with other employees, various agents of the company, and representatives from United States government agencies.

Summary judgment was granted on employer failure to file an answer to the complaint.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Sharon L. Joyce, an Individual; complaint alleged violation of the Act's Section 8(a)(1). General Counsel's motion for summary judgment filed 29 August 1983.

***

Can-Do, Inc. (7-CA-22703; 279 NLRB No. 111) Roseville, Mich. 30 April. Members Dennis and Stephens granted default summary judgment and held that the employer violated the Act by refusing to make required payments to various fringe benefits, by failing to pay liquidated damages on late or unpaid fringe benefits fund payments, and by failing to provide information necessary for policing the fringe benefit fund provisions of its agreement with Iron Workers Local 426. Chairman Dotson dissented in part.

Summary judgment was granted on employer failure to file an answer to the complaint.

Chairman Dotson dissented from granting summary judgment with respect to the allegations that the employer unlawfuly refused to make fringe benefit fund payments and refused to pay liquidated damages. He said that the General Counsel did not establish that the employer engaged in conduct reflecting a substantial repudiation of its contractual or bargaining obligations.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Iron Workers Local 426 Fringe Benefit Funds; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for default summary judgment filed 24 January 1984.

***

Stop-N-Go Foods, Inc. (9-CA-21405; 279 NLRB No. 102) Englewood, Ohio. 30 April. The Board affirmed an administative law judge's decision that the employer unlawfully refused to hire Charlotte Moneagle because she filed charges and gave testimony to the Board at the unfair labor practice hearing in Southland Corporation, 267 NLRB 303 (1983).

In the 1983 proceeding, the Board found that Southland discharged Moneagle because of her protected concerted activities.

The employer claimed that it did not hire Moneagle because she had a cash-handling problem while working for Southland. The judge noted that at an interview Moneagle told store supervisor Monnheimer that she was discharged by Southland for union activity, that Southland had advanced certain cash-handling accusations as a pretext for her discharge and that those accusations had been found false by an administrative law judge and by the Board. In light of this and other evidence, the judge concluded that the employer did not meet its burden of showing that it would not have hired Moneagle in the absence of her protected activity.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Charlotte Moneagle, and Individual; complaint alleged violation of the Act's Section 8(a)(1) and (4). Hearing at Dayton, 31 January 1985. Adm. Law Judge Nancy M. Sherman's decision issued 27 March 1985.

***

Carpenters Local 608 (2-CB-9767, et al.; 279 NLRB No. 99) New York, N.Y. 30 April. Agreeing with an administrative law judge, the Board held that the union violated the Act by denying John Harte, Franklin McMurray and Eugene Clarke the right to review and inspect hiring hall records, and by refusing to supply them with information with regard to the operation of the hiring hall.

The judge found that the three dissident members had asked for the information out of what the judge said was a reasonable belief that they were being discriminated against in referrals. Harte, McMurray and Clarke had run against the incumbent union officers, had spoken out at meetings, and had distributed literature critical of the union's leadership--because of these protected concerted activities, the judge said, the union and its officials harbored substantial animus against the three. He concluded that the union denied the three access to its hiring hall records because of their dissident intra-union activities.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Individuals; complaint alleged violation of the Act's Section 8(b)(a)(A) and (2). Hearing at New York on dates in December 1983 and April 1984. Adm. Law Judge Steven B. Fish's decision issued 26 March 1985.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Broadstreet Medical Nursing Center (Service Employees Local 79) Detroit, Mich. 4 April. 7-CA-24908; JD-112-86, Thomas A. Ricci, Adm. Law Judge

Woodcliff Lake Manor Nursing Home and Local 6, Health Professionals, ILA 1115 Nursing Home Employees Woodcliff Lake, N. J. 25 April. 22-CA-11676, 22-CB-4718; JD-(NY)-35-86, James F. Morton, Adm. Law Judge

Central Transport (Teamsters) Sterling Heights, Mich. 29 April. 7-CA-22113, 23180; JD-114-86, Thomas D. Johnston, Adm. Law Judge

Electrial Workers (IBEW) Local 3 (Telecom Plus of New York City) New York, N. Y. 29 April. 29-CP-516; JD-(NY)-33-86, Steven Davis, Adm. Law Judge

Mattiace Petrochemical Co. (Teamsters Local 810) Glen Cove, N. Y. 29 April. 29-CA-12101; JD-(NY)-34-86, Raymond P. Green, Adm. Law Judge

East Central Communications (Graphic Arts Local 219M) Rantoul, Ill. 29 April. 33-CA-7452; JD-116-86, Claude R. Wolfe, Adm. Law Judge

GAF Corp. (Individual) Dallas, Tex. 30 April. 16-CA-12057; JD-(ATL)-31-86, Richard J. Linton, Adm. Law Judge

Mayfield Produce Co. (Teamsters Local 525) Staunton, Ill. 30 April. 14-CA-18024; JD-117-86, Robert T. Wallace, Adm. Law Judge

Marino Electric Electrial Workers (IBEW) Local 716 Houston, Tex. 30 April. 23-CA-10000; JD-(ATL)-25-86, Richard J. Linton, Adm. Law Judge

The Original Oyster House (Individual), Pittsburgh, Pa. 1 May. 6-CA-15962; JD-106-86, Lowell Goerlich, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Brinks Inc. (17-RC-9672) Kansas City, Mo. 21 April. Drivers, messengers and guards shall vote for representation by Plant Guards, or for no representation.

Star Blends, Inc. (17-RC-9811) St. Joseph, Mo. 21 April. All production and maintenance employees shall vote for representation by Food and Commercial Workers Local 576, or for no representation.

Morse Holding, Inc. (17-RC-9802) Topeka, Kans. 23 April. All service department employees shall vote for representation by Teamsters Local 696, or for no representation.

R. W. Harmon & Sons, Inc. (17-RC-9815) Independence, Mo. 30 April. All drivers and aides shall vote for representation by Food and Commercial Workers Local 576, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2016

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

5 - 9 MAY 1986 (W-2016)

NEWARK PUBLIC LIBRARY

MAY 28 1986

U. S. GOVT. PUBS.
DEPOSITORY 370

CASES SUMMARIZED

Asarco Inc. Mission Unit	Sahurita, Ariz.	11
Ashcraft (David) Co., Inc.	Sterling Heights, Mich.	6
Bekins Moving and Storage Co.	Everett, Wash.	3
Cal-Western Transport	City of Industry, Calif.	10
Calplant Constructors, A Div. of Calplant Engineering Service, Inc.	Long Beach, Calif.	1
Can-Do, Inc.	Roseville, Mich.	4
Chicago Truck Drivers, Helpers, and Warehouse Workers Union	Chicago, Ill.	9
Country Epicure, Inc.	Katonah, N.Y.	2
Dubose Masonry, Inc.	Crowley, Tex.	10
Electrical Workers (IBEW) Local 211 (U.S. Capital Telecommunications Corp.)	Atlantic City, N.J.	8
G.M. Trimming, et al.	Brooklyn, N.Y.	12
GMW, Inc.	Roseville, Minn.	5
Hansen Brothers Enterprises	Grass Valley, Calif.	5

LR 1.15/2:

READEX FICHE best copy available

Island Creek Coal Co. and Langley and Morgan Corp.	Harlan, Ky.	8
Krehbiel (C.J.) Co.	Cincinnati, Ohio	7
La Reina, Inc.	Los Angeles, Calif.	6
Las Vegas Produce, Inc. and Carmelo P. Caldero	Chicago, Ill.	9
Nielson Lithographing Co.	Cincinnati, Ohio	11
Pemberton Manor	Greenwood, Miss.	4
Professional Care Centers of North America, Inc.	St. Louis, Mo.	1
Salinas Valley Ford Sales, Inc.; Bobwills Dodge, Chrysler, Plymouth, Inc.; Town & Country Olds/ Cadillac/Honda	Salinas, Calif.	2
Specialty Steel Treating, Inc.	Detroit, Mich.	6
United States Aviex Co.	Niles, Mich.	3
Watt Electric Co. and John O. Watt	Tulsa, Okla.	10

OTHER CONTENTS

List of Decisions of Administrative Law Judges 13

List of Directions of Elections bv Regional Directors 14

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Calplant Constructors, A Div. of Calplant Engineering Service, Inc. (21-RC-17363; 279 NLRB No. 113) Long Beach, Calif. 30 April. The Board found that the union interfered with an election held 23 March 1984 when, two weeks prior to the election, a union representative told an employee that if he signed a union membership card "now" he would not have to pay any membership fees.

The union representative clearly and unambiguously offered to waive initiation fees as an incentive for signing a membership card before the election, the Board concluded. It said: "This is exactly the kind of solicitation of preelection support which the Supreme Court in Savair Mfg. Co. concluded should not be permitted because it gave other unit employees a misleading view of the actual union support before an election."

The Board set aside the election and directed that a new one be held to determine employee desire for representation by the Seafarers.

(Chairman Dotson and Members Dennis and Babson participated.)

***

Professional Care Centers of North America, Inc. (14-RC-10016; 279 NLRB No. 106) St. Louis, Mo. 30 April. Chairman Dotson and Member Dennis overruled an objection alleging that AFSCME Local 410 interfered with an election by distributing a document containing an altered election ballot. Member Johansen dissented.

The alterations included an "X" placed in the "yes" box of a reduced-size copy of the Board's sample ballot.

Member Johansen noted that the document failed to note that alterations were made, what the alterations were, or who made them. This can mislead voters who may perceive the document as emanating from the Board in that form, he said.

Chairman Dotson and Member Dennis noted the holding in SDC Investment, Inc., 274 NLRB No. 78, that "an altered ballot that on its fact clearly identifies the party responsible for its preparation is not objectionable and will not serve as the basis for setting aside an election." Here, they said, the altered ballot satisfies the SDC standards because the union is clearly identified as the source on the face of the document."

The Board panel majority certified AFSCME Local 410 as the representative of the company's employees.

(Chairman Dotson and Members Dennis and Johansen participated.)

***

Country Epicure, Inc. (2-CA-20837(E); 279 NLRB No. 104) Katonah, N.Y. 30 April. Reversing an administative law judge's supplemental decision, the Board found that the General Counsel was substantially justified in issuing a complaint against the employer in a 1985 unfair labor practice proceeding. It accordingly dismissed an employer application for an award of attorney's fees and expenses, filed under the Equal Access to Justice Act.

The judge in his decision in the unfair labor practice proceeding had dismissed allegations that the employer unlawfully discharged Anthony Astrologo because of his union activities.

In this supplemental proceeding, the Board found contrary to the judge that the General counsel was substantially justified in believing that the circumstantial evidence could justify an inference that the company knew of Astrologo's union activities. It also noted other factors to further support an inference of employer knowledge: the timing of the discharge, about three weeks after the company became aware of the union's organizing drive; the fact that Astrologo was the company's only mechanic, a classification specifically mentioned in the union's demand for recognition; and the fact that Astrologo had been a valued employee who received a bonus and raise.

(Members Dennis, Johansen, and Babson participated.)

***

Salinas Valley Ford Sales, Inc.; Bobwills Dodge, Chrysler, Plymouth Inc.; Segel Enterprises Inc., d/b/a Town & Country Olds/Cadillac/Honda (32-CA-5953, 6183; 279 NLRB No. 89) Salinas, Calif. 30 April. Reversing an administrative law judge's findings, Members Dennis and Johansen held that the employer unlawfully failed to recall economic strikers Ivan San Nicholas and Robert Boranda, after they unconditionally offered to return to work, when vacancies in their former positions were created by departure of their replacements. Chairman Dotson would find no violation with respect to the failure to recall Boranda.

The employer claimed it did not recall San Nicholas because it learned he had obtained employment with another employer. The Board noted, however, that the employer produced no evidence to show that the job was substantially equivalent to the one San Nicholas had with Salinas Valley Ford prior to the strike. Accordingly, the Board held, the employer's failure to recall San Nicholas to his former job on departure of his replacement violated the Act.

For similar reasons, the Board panel majority held unlawful the employer's failure to recall Robert Boranda. Chairman Dotson found that the employer presented a legitimate and substantial reason for not rehiring him.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Machinists District Lodge 98. Local Lodge 1824; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Monterey on dates in May and August 1984. Adm. Law Judge Gordon J. Myatt's decision issued 12 August 1985.

United States Aviex Company (7-CA-21791, 22573, 7-RC-16853; 279 NLRB No. 110) Niles, Mich. 30 April. The Board agreed with an administrative law judge that the employer's violations of the Act included interrogating employees about their sentiments for the Electrical Workers (IUE), creating an impression of surveillance, and demeaning employees because they supported the union. It further found, as did the judge, that these violations did not warrant the issuance of a bargaining order.

An election objection alleging employer misconduct was sustained. The representation proceeding was remanded to the Regional Director to open and count ballots to which challenges were overruled, and, if a revised tally shows that a majority of ballots was not cast for the union, then the election will be set aside and a second one held.

Among dismissed allegations was one alleging that the company unlawfully laid off 33 employees on 2 December 1982. The judge found merit to the employer's contention that valid economic considerations rather than union activities motivated the layoff.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by the Electrical Workers; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Cassopolis, 19 December 1983 and at Niles on 20-21 December 1983 and 14-16 February 1984. Adm. Law Judge Donald R. Holley's decision issued 24 October 1984.

***

Bekins Moving and Storage Co. (19-RC-11254; 279 NLRB No. 109) Everett, Wash. 30 April. The Board agreed with a Hearing Officer's recommendation to overrule objections alleging that a 13 August 1985 election was not conducted under the proper laboratory conditions to ensure the secrecy of the election ballot. It also adopted, pro forma, his recommendation to overrule challenges to nine ballots.

The election had resulted in 2 votes for, and 1 against, Teamsters Local 174, with 13 challenged ballots.

One objection alleged that "voters did not mark their ballots in a booth or place suited to the secrecy of the ballot." In overruling the objection, the Hearing Officer found no evidence that anyone in the polling area could have seen how an employee marked his or her ballot. The Board in adopting the Hearing Officer's finding stressed to the Regional Offices the importance of taking strict care to monitor the polling areas in elections to assure that voters mark their ballots in the appropriate place designated for voting, be it a voting booth or the "three sided box" used in this election.

(Chairman Dotson and Members Johansen and Babson participated.)

***

Pemberton Manor (26-CA-11498; 279 NLRB No. 112) Greenwood, Miss. 30 April. Granting summary judgment, the Board found that the employer unlawfully refused to bargain with AFSCME Local 1733, the certified representative of its nurses' aides, dietary employees, laundry employees, housekeeping employees, the maintenance employee and medical attendants.

Summary judgment was granted on a finding that all issues raised were, or could have been, raised in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by AFSCME Local 1733; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 10 March 1986.

***

Can-Do, Inc. (7-CA-23057; 279 NLRB No. 108) Roseville, Mich. 30 April. Members Dennis and Stephens granted default summary judgment and held that the employer violated the Act by refusing to make contractually-required payments to fringe benefits funds, by refusing to pay liquidated damages on late or unpaid fringe benefits, and by refusing to provide the union with monthly fringe benefit fund reports and with sufficient information to enable it to conduct an audit. Chairman Dotson would deny the motion for default summary judgment.

Default summary judgment was granted on employer failure to file a timely answer to the complaint.

Chairman Dotson would find insufficient evidence to conclude that the employer engaged in conduct reflecting a substantial repudiation of the contract or of its bargaining obligations. He said: "Without more, the Respondent's refusal to make payments to unspecified fringe benefits funds, to pay liquidated damages, to provide monthly reports and provide sufficient information for an audit, amounts to nothing more than a contract violation."

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Carpenters District Council of Detroit, Wayne, Oakland, Macomb, St. Clair, Sanilac and Monroe counties and Vicinities.; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for default summary judgment filed 12 April 1984.

***

GMW, Inc. (18-CA-8024, et al.; 279 NLRB No. 101) Roseville, Minn. 30 April. Granting summary judgment, the Board held that the employer violated the Act by making unilateral changes in terms and conditions of employment without bargaining with the unions representing units of its employees; by bypassing the unions and dealing directly with employees; and by soliciting employees to repudiate the wage and benefits schedules and provisions set forth in their respective bargaining agreements and to enter into individual employment agreements.

Summary judgment was granted on employer failure to file a timely answer.

Chairman Dotson agreed that the employer violated the Act. He stated: "Its direct dealing with employees and its solicitation of employees to enter into individual employment agreements establish that the Respondent's conduct amounted to more than a mere breach of contract. Rather, it constituted a substantial repudiation of its contractual and bargaining obligation."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Machinists District 77, et al.; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 18 July 1983.

***

Hansen Brothers Enterprises (20-CA-18393; 279 NLRB No. 98) Grass Valley, Calif. 30 April. Reversing an adminstrative law judge's decision, Members Dennis and Johansen found that an offer to return to work, made by Teamsters Local 150 on behalf of economic strikers,was an unconditional offer to return to work even though the offer was coupled with a demand that striker replacements be discharged. They thus held that the employer violated the Act by its refusal to reinstate the strikers. Chairman Dotson dissented.

The panel majority noted that where striker replacements are only temporary, an offer to return to work which demands no more than the discharge of those replacements is appropriate. Here, Members Dennis and Johansen found, the employer failed to present any evidence whatsoever that the replacements understood that they were hired as permanent employees.

Disagreeing, Chairman Dotson found that early in the strike, the employer's actions demonstrated its belief that it had permanently replaced the strikers. He would find the offer to return to work "inappropriate" insofar as it demanded the discharge of the replacements.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 150; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Kansas City, 3 April 1984. Adm. Law Judge David G. Heilbrun's decision issued 2 August 1984.

La Reina, Inc. (21-CA-22993, et al., 21-RC-17354; 279 NLRB No. 103) Los Angeles, Calif. 30 April. Affirming an administrative law judge's decision, the Board held that the employer unlawfully told an employee that the company knew who started the union activity at the plant, selected three employees for layoff because they were involved with organizing for Bakery Workers Local 37, and required stricter compliance with a clothing rule following a representation election.

In selecting the employees who would be laid off, the employer claimed it applied three criteria: poor quality of work, failure to punch timecards, and dangerous use of machinery. The judge characterized the employer's explanation as "unconvincing," and concluded that the three leading union activists were laid off in violation of the Act.

The judge overruled objections to the 24 February 1984 election, in which 93 votes were cast for, and 97 against the union, with two challenged ballots.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Bakery Workers Local 37 and Individuals; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Los Angeles, 11-14 September 1984. Adm. Law Judge Gordon J. Myatt's decision issued 30 September 1985.

***

David Ashcraft Company, Inc. (7-CA-24805; 279 NLRB No. 94) Sterling Heights, Mich. 30 April. The Board granted summary judgment and held that the employer violated the Act by discontinuing fringe benefit fund contributions required under its contract with the union, by failing to pay liquidated damages for its discontinuance of the fringe benefit fund contributions, and by failing to respond to the union's request to allow an audit of its payroll and other financial records to determine the accuracy of its fringe benefit fund contributions.

Summary judgment was granted on employer failure to file an answer.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Carpenters' District Council of Detroit, Wayne, Oakland, Macomb, St. Clair, Sanilac and Monroe Counties and vicinity. General Counsel's motion for summary judgment filed 16 January 1986.

***

Specialty Steel Treating, Inc. (7-CA-23780, et al.; 279 NLRB No. 67) Detroit, Mich. 30 April. The Board agreed with an administrative law judge that two written reprimands the employer issued William Urban were unrelated to his activity for the Auto Workers and therefore did not violate the Act; but it also found, contrary to the judge, that a third reprimand was motivated by unlawful considerations.

The first two reprimands, the Board found, were issued for tardiness and insubordination. The third reprimand, for being absent the afternoon of the day Urban testified in a Board hearing, was issued in retaliation for his participating in the Board hearing, the Board concluded.

Turning to another issue, the Board found contrary to the judge that the employer violated the Act by implementing wage increases and bonuses while election objections were pending. It noted that the company's president testified that the bonuses and wage increases were discretionary. The Board said: "An employer may not unilaterally grant discretionary increases and bonuses under these circumstances."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Individual and the Auto Workers; complaint alleged violation of the Act's Section 8(a)(1),(3),(4), and (5). Hearing at Detroit, 15-17 April 1985. Adm. Law Judge Burton S. Kolko's decision issued 16 December.

***

C. J. Krehbiel Company (9-RC-14704; 279 NLRB No. 114) Cincinnati, Ohio. 7 May. Chairman Dotson and Member Dennis overruled an objection alleging that Graphic Communications Local 508 interfered with a 20 June 1985 election by circulating two flyers which, the employer alleged, were likely to mislead employees into believing that the Board supported the union. Member Johansen dissented.

One flyer contained the caption and remedy section of an administrative law judge's decision in a case involving another printing company. On the same page was a "crowing rooster," the words "Vote Yes," a box with an "X" in it, and partisan cartoons. The second flyer indicated that the first flyer "came from the office of the union."

In concluding that the first flyer would not mislead employees, the panel majority said: "No reasonable employee would believe that an administrative law judge would embellish his decision with cartoons, slogans, and crowing roosters."

Member Johansen would find that the nature and contents of the document served to foster in a deceptive manner the misleading impression that the Board favored the union. He would direct a new election.

The panel majority certified the union as bargaining agent.

(Chairman Dotson and Members Dennis and Johansen participated.

***

Electrical Workers (IBEW) Local 211 (U.S. Capital Telecommunications Corp.) (4-CC-1618; 279 NLRB No. 119) Atlantic City, N.J. 7 May. The Board affirmed an administrative law judge's decision that the union unlawfully threatened a neutral employer, The Perini Corporation, in order to force Perini to cease business with United Technologies Communications Company.

Technologies sent two workers who were members of the Communication Workers and not of the IBEW to a construction site where Perini was the general contractor. The IBEW then told Perini that it would walk off the job if the CWA members were permitted to work.

The judge found that the statement constituted unlawful coercion of a neutral employer to force that neutral employer not to permit workers employed by another company to work at the jobsite.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Communications Workers Local 13000; complaint alleged violation of the Act's Section 8(b)(4)(ii)(B). Hearing at Ventor on dates in July 1985. Adm. Law Judge Walter J. Alprin's decision issued 31 December.

***

Island Creek Coal Company and Langley and Morgan Corp. (5-CA-14300; 279 NLRB No. 116) Harlan, Ky. 7 May. The Board affirmed an administrative law judge's decision that Langley and Morgan Corp. violated the Act by telling employees that Island Creek Coal Company would cause L and M employees to be laid off because an employee, acting through Mine Workers Local 6843 filed, safety-related complaints under the Federal Mine Safety and Health Act.

The safety complaint had resulted in monetary penalties against L & M and ICCC.

The judge found insufficient evidence to conclude that ICCC and L & M were joint employers of the L & M labor crew. He thus dismissed all allegations against ICCC.

Dismissed was an allegation that employees were discriminatorily laid off by L & M in December 1981 and February 1982. The judge found that the employees were laid off because the amount of work available had diminished.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Larry Long, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Grundy and Richlands, Va. on dates in October and November 1984. Adm. Law Judge James T. Youngblood's decision issued 12 June 1985.

***

Las Vegas Produce, Inc. and Carmelo P. Caldero, Individually (13-CA-19903; 279 NRLB No. 120) Chicago, Ill. 8 May. The Board agreed with an administrative law judge's decision directing Las Vegas Produce and Carmelo Caldero, jointly and severally, to make whole 35 unit employees for losses suffered when the employer unlawfully failed to pay the wages and benefits called for in its contract with Teamsters Local 703.

After the Board issued a 1984 supplemental decision and order (272 NLRB 915) directing the company to pay a total of $746,877.44 to the discriminatees, a controversy arose over the personal liability of Carmelo P. Caldero, the President, Treasurer, sole stockholder, and chief operating officer of the corporation. The Board found that Caldero is the alter ego of Las Villas, and it adopted the judge's recommended order imposing full backpay liability on him as an individual.

Member Babson agreed that Caldero should be held personally liable. He particularly relied on the judge's finding that Caldero owned the corporation, made all its decisions, intermingled personal and corporate assets, caused the corporation to be undercapitalized, and made use of corporate funds for personal needs. In these circumstances, he concluded that Caldero was an alter ego and that piercing the corporate veil was warranted.

(Chairman Dotson and Members Johansen and Babson participated.)

Adm. Law Judge Walter H. Maloney Jr.'s second supplemental decision issued 13 August 1985.

***

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) (13-CB-10385,10546; 279 NLRB No. 122) Chicago, Ill. 9 May. The Board found that the union refused to bargain with Signal Delivery Service, Inc. and Leaseway Trucking, Inc. in violation of the Act by insisting on the merger of separate established bargaining units of Signal employees and Leaseway employees and by insisting on the arbitration of grievances which demand the merger of such separate established bargaining units, a nonmandatory subject of bargaining.

The two trucking companies had concurrent collective-bargaining agreements with the union covering separate units of employees. The three units the union attempted to merge were Signal's "home delivery" and "city shuttle" units and Leaseway's "general cartage" unit. Each unit had previously been covered by a separate agreement, and each had its own separate seniority list.

In addition, the Board found that by processing grievances and insisting on arbitration of grievances demanding the dovetailing of the seniority rights of the separate established bargaining units of Signal employees and Leaseway employees, the union restrained and coerced employees in violation of the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Signal Delivery Service, Inc. and Leaseway Trucking, Inc.; complaint alleged violation of the Act's Section 8(b)(1)(A) and (3). Parties waived hearing before an administrative law judge.

***

Cal-Western Transport (21-CA-24322; 279 NLRB No.115) City of Industry, Calif. 9 May. On motion for summary judgment, the Board found unlawful the employer's refusal to bargain with Teamsters Local 420

The union had been certified as collective-bargaining representative of all truck drivers, mechanics, and yardmen at the employer's City of Industry facility.

Summary judgment was granted on a finding that all issues raised were or could have been litigated in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 420; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 20 February 1986.

***

Watt Electric Company and its alter ego, Watt Plumbing, Air Conditioning & Electric, Inc. and John O. Watt (16-CA-11434; 279 NLRB No. 129) Tulsa, Okla. 9 May. Granting summary judgment, the Board directed the employer to make whole four employees in the amounts set forth in the Regional Director's backpay specification for losses they suffered through employer discrimination.

Summary judgment was granted on a finding that the employer's answer to the backpay specification and notice of hearing did not meet the requirements of the Board's rules.

(Chairman Dotson and Members Dennis and Babson participated.)

General Counsel's motion for summary judgment filed 15 October 1985.

***

Dubose Masonry, Inc. (16-CA-12052; 279 NLRB No. 125) Crowley, Tex. 9 May. The Board affirmed an administrative law judge's decision that the employer unlawfully discharged two employees because they were not members of Bricklayers Local 6.

The judge rejected the employer's contention that it laid off the employees because it didn't need as many bricklayers. He found that the layoffs were motivated by an employer belief that the union wanted the nonunion workers

terminated from their employment, and that the union would shut down the job if the nonunion employees were not terminated.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Burton E. Lewis, an Individual; complaint alleged violation of the Act's section 8(a)(1) and (3). Hearing at Fort Worth in dates in July 1985. Adm. Law Judge Richard H. Beddow's decision issued 30 December.

***

The Nielson Lithographing Co. (9-CA-20474, 21292; 279 NLRB No. 118) Cincinnati, Ohio. 8 May. The Board agreed with an administrative law judge's findings that the employer violated the Act by refusing to furnish Graphic Communications Local 508 with financial information which the union requested; by making unilateral changes in terms and conditions of employment when it had not reached impasse in its negotiations with the union; and by refusing to reinstate unfair labor practice strikers on their unconditional offer to return to work.

The employer contended that it was not pleading proverty or inability to pay and, therefore, that it was not obligated to turn over the reque financial data to support its demand for economic concessions. The judge noted tnat the employer told the union that jobs would be lost and the company would go out of business unless the employees went along with the proposed economic concessions. This was the functional equivalent of claiming an inability to pay and triggered the employer's duty to turn over financial data to support its claim, the judge held.

The judge further held that since the employer violated the Act by refusing to turn over the requested data, it had not bargained in good faith to impasse when it unilaterally implemented changes in pay and working conditions.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Graphic Communications Local 508; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Cincinnati, 5-7 March 1985. Adm. Law Judge Martin J. Linsky's decision issued 12 June.

***

Asarco Incorporated Mission Unit (28-CA-7758; 279 NLRB No. 117) Sahurita, Ariz. 7 May. Affirming an administrative law judge's decision, the Board dismissed allegations that the employer unlawfully interfered with employee rights when a shop superintendent hit a union officer on the shoulder during a meeting over grievances.

The judge found that while the shop superintendent's conduct appeared to have been "rude and unnecessary," it did not fall within the ambit of "inherently destructive" conduct. He noted that the union and the company have a long history of collective bargaining with no history of prior unfair labor practice charges; that the company and the union have enjoyed an amicable relationship; and that the

shop superintendent's conduct at the meeting was "atypical, was personal, and was of an isolated nature."

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Teamsters Local 310, Operating Local 428; Electrical Workers (IBEW) Local 570 and the Steelworkers; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Tucson, 13 December 1984. Adm. Law Judge Russell L. Stevens' decision issued 4 March 1985.

***

G. M. Trimming, Inc., R.M. Triks Ltd., HRM Sportswear, Inc., J.S. Trimming Co., Jodie Sportswear Inc., Jodie Sportswear Inc., Debtor-In-Possession, and George Marks (29-CA-10206, 10315; 279 NLRB No. 121) Brooklyn, N.Y. 9 May. The Board agreed with an administrative law judge's decision that the single employer violated the Act by laying off an employee because he announced his intention to attend a union meeting and then laying off two other employees for furnishing information to the union about company payroll practices; and by denying representatives of Clothing and Textile Workers Local 169 access to company premises.

The judge dismissed allegations that the employer unlawfully refused to make contributions on behalf of G. M. Trimming employees to Local 169 funds, and unlawfully entered into an agreement with Journeymen and Production Allied Services Local 157 covering G. M. employees, at at time when, it was alleged, Local 169 represented the G.M. employees. The judge found that Local 169 acquiesced in the exclusion of G.M. employees from the unit covered by the Local 169 contract with Jodie Sportswear.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Clothing and Textile Workers local 169; complaint alelged violation of the Act's Section 8(a)(1),(2),(3),(4) and (5). Hearing at Brooklyn on dates in January, February, and March 1983. Adm. Law Judge Harold B. Lawrence's decision issued 7 March 1985.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Communications Workers Local 11500 (Individual), Chula Vista, Cal. 17 April. 21-CB-9365; JD-40-86, Harold A. Kennedy, Adm. Law Judge.

Arizona Portland Cement Company (Boilermakers Local D296), Rillito, Ariz. 18 April. 28-CA-8107;JD-(SF)-17-86, David G. Heilbrun, Adm. Law Judge

Seng Crane & Excavating, Inc. (Teamsters Local 406), Manistee, Mich. 2 May. 7-CA-24951;JD-111-86, John H. West, Adm. Law Judge

The Idaho Statesman (Typographical Union No. 271), Boise, Id. 5 May. 19-CA-17281 et al;JD-(SF)-41-86, Michael D. Stevenson, Adm. Law Judge

Plummers Local 314 (Individual), Lenexa, Kan. 5 May. 17-CB-3109;JD-119-86, James L. Rose, Adm. Law Judge

Steelworkers Local 4754 (Warrior and Gulf Navigation Company), Mobile, Ala. 5 May. 15-CB-3105;JD-(ATL)-24-86, Hutton S. Brandon, Adm. Law Judge

Central Management Conpany d/b/a Magnolia Manor Nursing Home (Service Employees Local 100), Shreveport, La. 5 May. 15-CA-9837-1;JD-(ATL)-36-86, J. Pargen Robertson, Adm. Law Judge

Continental Radiator Corporation and Great Lake, Inc. (Auto Workers and Individuals), Detroit, Mich. 6 May. 7-CA-23796 et al;JD-118-86, David L. Evans, Adm. Law Judge

Lamar Industrial Plastics Co. (Auto Workers), Sterling Heights, Mich. 6 May. 7-CA-23969(1),(2);JD-122-86, Arline Pacht, Adm. Law Judge

Ardie Cox Trucking (Individuals) Bluefield, W.Va. 6 May. 9-CA-22401-1,2;JD-120-86, Joel A. Harmatz, Adm. Law Judge

Raymond Engineering, Inc. (Auto Workers Local 376), Middletown, Conn. 7 May. 39-CA-2431,2608;JD-121-86, Norman Zankel, Adm. Law Judge

Blue Ridge Nursing Home, Inc. d/b/a Fairburn Health Care Center (Hospital Employees 1199), Fairburn, Ga. 8 May. 10-CA-21101,10-RC-13123;JD-(ATL)-30-86, Robert A. Gritta, Adm. Law Judge

Chelsea Laboratories, Inc. (Individual), Inwood, N.Y. 8 May. 29-CA-11697;JD-(NY)-36-86, Eleanor MacDonald, Adm. Law Judge

Clarence Trout d/b/a Trout Air Freight and Trout Express (Teamsters Local 325), Rockford,Ill. 8 May. 33-CA-7148;JD-115-86, Mary Ellen R. Benard, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Greyhound Exposition Services (31-RC-5983), Las Vegas, Nev. 25 April. All employees classified as runners shall vote for representation by Teamsters Local 631, or for no representation.

Ovid Convalescent Manor, Inc. (7-RD-2298) Ovid, Mich. 30 April. All full and regular part-time nurses aides, maintenence, dietary, housekeeping and laundry employees shall vote for representation by Service Employees Local 79, or for no representation.

Shell Oil Co. (13-RD-1683) Hammond, Ind., Arlington Heights and Bedford Park, Ill. 1 May. All lead mechanics, mechanics, mechanics helpers and apprentice mechanics shall vote for representation by Machinists Local 701, or for no representation.

Goodyear Tire and Rubber Company (17-RD-1031) Mission, Kan., North Kansas City and Kansas City, Mo. 2 May. All drivers, general service employees, automotive technicians, alignment specialists shall vote for representation by Machinists Local 778 and Teamsters Local 552, jointly, or for no representation.

Penreco, A Division of Pennzoil Company (22-RD-847) Lyndhurst, N.J. 2 May. All employees employed at the waterfront storage plant, terminal yard, docks and sidings shall vote for representation by ILA Local 966, or for no representation.

Delta Foremost Corp. (26-RC-6834) Memphis, Tenn. 6 May. All maintenance employees shall vote for representation by Food and Commercial Workers Local P-242, or for no representation.

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2017

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

12 - 16 MAY 1986 (W-2017)

NEWARK PUBLIC LIBRARY

JUN - 5 1986

U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Continental Industries	Tulsa, Okla.	1
Florsheim Shoe Store Co.	Miami, Fla.	3
Frost (George) Co.	Shirley, Mass.	1
Getty Refining and Marketing Co.	Delaware City, Del.	3
Gull, Inc.	Smithtown, N.Y.	4
Iron Workers (Walker Construction Co.)	Ft. Worth, Tex.	1
Kaufman Carpet Co., Inc.	Lodi, N.J.	2
Monarch Building Supply	Honolulu, Hawaii	3
Pascarelli Plumbing and Heating Co., Inc.	South Norwalk, Conn.	2

LR 1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 5

List of Directions of Elections by Regional Directors 5

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

George Frost Co. (1-CA-23325; 279 NLRB No. 124) Shirley, Mass. 13 May. Granting summary judgment, the Board held unlawful the employer refusal to bargain with the Paperworkers, the certified collective-bargaining representative of production and maintenance employees.

Summary judgment was granted on a finding that all raised were, or could have been, raised in the underlying representation proceeding.

(Members Dennis, Johansen and Babson participated.)

Charges filed by the Paperworkers; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 15 January 1986.

***

Iron Workers (Walker Construction Company) (16-CB-2255; 279 NLRB No. 123) Ft. Worth, Tex. 13 May. The Board denied a union motion for reconsideration of a requirement that it reinstate former Local 263 president James W. Stevens to his office. In a 1985 proceeding (277 NLRB No. 99), the Board found that the union unlawfully disciplined Stevens for filing charges with the Board, and it ordered the union to reinstate Stevens as president of the Local, remove sanctions against him, and make him whole.

In its motion, the union asserted that Stevens' term of office expired and that another member was elected on 24 June 1985 as president of the Local.

The General Counsel moved the Board to modify its order to require that the union, in addition to reinstating Stevens, vacate the 24 June 1985 election and any other election held before Stevens is reinstated and has served as president for a period equal to the time left in his term of office when he was unlawfully removed, and until such time as unlawful sanctions against Stevens have been removed and he has had sufficient time to conduct a campaign to run for president, if he so desires.

The Board denied the union's motion and granted the General Counsel's motion.

(Chairman Dotson and Members Dennis and Babson participated.)

***

Continental Industries (16-CA-9027; 279 NLRB No. 130) Tulsa, Okla. 13 May. The Board reversed an administrative law judge's conclusion that the employer violated the Act by interrogating Floyd Cox, leading employee adherent of Iron Workers Local 620.

In making this finding, the judge had relied on PPG Industries, 251 NLRB 1146 (1980). However, the Board noted that its decision in Rossmore House, 269 NLRB 1176 (1984), overruled PPG Industries "to the extent it found that 'an employer's questioning open and active union supporters about their union sentiments, in the absence of threats or promises, necessarily interferes with, restrains, or coerces employees in violation of Section 8(a)(1) of the Act.'"

Applying the Rossmore House analysis, the Board found that Cox was an open and active union supporter and, considering all the circumstances, it concluded the employer's questioning of Cox was noncoercive and dismissed the complaint.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Iron Workers Local 620; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Tulsa, 23 September 1980. Adm. Law Judge James J. Jenson's decision issued 12 March 1981.

***

Kaufman Carpet Co., Inc. (22-CA-14145; 279 NLRB No. 128) Lodi, N.J. 14 May. Granting summary judgment, the Board found unlawful the employer's refusal to bargain with Teamsters Local 560, the certified collective bargaining representative of all truck drivers employed at the employer's Lodi facility.

The Board found that the employer raised no issues which were not or could not have been litigated in the underlying representation proceeding.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Teamsters Local 560; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 6 January 1986.

***

Pascarelli Plumbing and Heating Company, Inc. (39-CA-2843; 279 NLRB No. 131) South Norwalk, Conn. 15 May. On motion for summary judgment, the Board found unlawful the employer's refusal to bargain with Plumbers Local 133, the certified collective-bargaining representative of all journeyman plumbers and pipefitters and apprentices employed by the employer at the Greenwich Tower Associates project in Greenwich, Conn.

The Board granted the General Counsel's motion in the absence of good cause being shown by the employer for its failure to file a timely answer to the General Counsel's complaint.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Plumbers Local 133; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 24 February 1986.

Monarch Building Supply (37-CA-2379; 279 NLRB No. 132) Honolulu, Hawaii. 15 May. Granting summary judgment, the Board held unlawful the employer's refusal to bargain with Laborers Local 368, the certified collective-bargaining representative of the company's full time and regular part time employees.

Summary judgment was granted on a finding that the employer did not raise any issues properly litigable in this proceeding.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Laborers Local 368; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 27 January 1986.

***

Getty Refining and Marketing Co. (4-CA-14068; 279 NLRB No. 126) Delaware City, Del. 14 May. Members Dennis and Babson held that the employer violated the Act by refusing to furnish Oil, Chemical and Atomic Workers Local 8-898 with information the union requested concerning the company's Employee Recreation Fund. Chairman Dotson dissented.

The Fund, in existence for almost 30 years, was used to partially support social events and group recreational activities, including the company Christmas party. The Board panel majority concluded that the fund was an existing employment condition, and that the employer therefore had an obligation to bargain about it and furnish the information the union requested about its income and expenditures.

Chairman Dotson relied on Benchmark Industries, 270 NLRB 22 (1984), in which the Board found that Christmas dinners and hams given by the employer were merely gifts and that the employer could unilaterally discontinue them. He would consider the employer-supported Fund in this case to be a similar gratuity, and he would hold that the employer had no obligation to furnish information about the Fund's operation.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Oil, Chemical and Atomic Workers Local 8-898; complaint alleged violation of the Act's Section 8(a)(1) and (5). Parties waived hearing before an administrative law judge.

***

Florsheim Shoe Store Company (12-CA-11535; 279 NLRB No. 133) Miami, Fla. 16 May. Contrary to an administrative law judge, the Board dismissed allegations that the employer discharged Murray Grenier, in violation of the Act, because he had been involved with Food and Commercial Workers Local 888 while working at one of the company's New York stores.

Chairman Dotson and Member Dennis found nothing to indicate that the employer was so concerned about the possibility that a union would organize employees in Florida that it would discharge an employee who had, so far as it knew, merely held routine membership while employed at its unionized stores outside Florida.

Member Babson did not concur entirely with his colleagues' rationale for dismissing the allegation, but he agreed that the allegation must be dismissed. In his view, the record did not contain evidence of a nexus between Grenier's discharge and his minimal union activity.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Miami, 22 July 1985. Adm. Law Judge Robert A. Gritta's decision issued 28 October.

***

Gull, Inc. (29-CA-10597; 279 NLRB No. 127) Smithtown, N.Y. 16 May. The Board agreed with an administrative law judge that the employer unlawfully discharged six employees because of their activities for Teamsters Local 806, and told employees it would never let a union into the company.

The judge rejected various reasons advanced for the discharges, including alleged work deficiencies, and found that the employer failed to demonstrate that it would have taken the same action against the six employees even in the absence of their union activities.

The Board also concurred with the judge that the company's institution of an open-door policy in response to the union campaign violated the Act, but it found this to be an unlawful grant of benefits designed to undermine employees support for the union, rather than a solicitation of grievances, as the judge had found.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 806; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Brooklyn and Hauppauge, on dates in January and April 1984. Adm. Law Judge Joel P. Biblowitz' decision issued 20 February 1985.

***

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Superior Export Packing Co., Inc. (Auto Workers District 65), Moonachie, N.J. 12 May. 22-CA-13806,13888;JD-(NY)-29-86, D. Barry Morris, Adm. Law Judge.

Fluid Packaging Company, Inc. (Clothing & Textile Workers), Lakewood, N.J. 13 May. 4-CA-15353;JD-127-86, Benjamin Schlesinger, Adm. Law Judge

Oxford Health Care Services, Inc. (Individual), Atlanta, Ga. 13 May. 10-CA-21098;JD-(ATL)-37-86, Philip P. McLeod, Adm. Law Judge

Stroh Container, Inc. (Machinists Local 57), Fremont, Ohio. 13 May. 8-CA-17011 et al.,8-RC-12906;JD-124-86, Benjamin Schlesinger, Adm. Law Judge

Alvy Creek Coal Company, Inc. (Mine Workers Local 28 and Individual), Abingdon, Va. 14 May. 5-CA-17409 et al.;JD-126-86, Steven M. Charno, Adm. Law Judge

The Charles Parker Company, Inc. and Union Manufacturing Co., Inc. (Electrical Workers UE), Meriden,Conn. 14 May. 39-CA-2685;JD-(NY)-40-86, Harold B. Lawrence, Adm. Law Judge

El Torito-La Fiesta Restaurants, Inc. (Hotel & Restaurant Employees Local 100), Yonkers, N.Y. 14 May. 2-CA-21049;JD-(NY)-42-36, Steven Davis, Adm. Law Judge

Key Food Stores Cooperative, Inc. (Individuals), Brooklyn, N.Y. 14 May. 29-CA-11866 et al.;JD-(NY)-37-86, Harold B. Lawrence, Adm. Law Judge

Mario Milevoi and Lucvia Milevoi, Joint Owners (Service Employees Local 32E), Bronx, N.Y. 14 May. 2-CA-20883;JD-(NY)-39-86, Harold B. Lawrence, Adm. Law Judge

Olive Mechanical Contractors, Inc. (Plumbers Local 349), New Haven, Conn. 14 May. 39-CA-2797;JD-(NY)-14-86, Harold B. Lawrence, Adm. Law Judge

Waldon, Incorporated (Machinists), Fairview,Okla. 14 May. 16-CA-12372;JD-(ATL)-32-86, Lawrence W. Cullen, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Chicago Educational Television Association (WTTW) (13-RC-16864), Chicago, Ill. 6 May. All mailroom employees shall vote for representation by Broadcast Employees NABET, or for no representation.

Beatty Motors Inc. (3-RC-8877), Buffalo, N.Y. 7 May. All service employees including all mechanics, parts counter men, parts drivers, parts stockmen, new car preparation men, lot boys, new car checkers, used car detailmen, painters, service writers, service clerks, rustproofers, polishers and janitors shall vote for representation by Auto Workers Local 55, or for no representation.

States Construction Company (17-RC-9821), Osage City, Mo. 7 May. All employees including heavy equipment operators, operator trainees and laborers, excluding office clerical and professional employees, shall vote for representation by Operating Engineers Local 513 and Iron Workers Local 386, jointly, or for no representation.

Erected Steel Products, Inc. (10-RC-13281) Atlanta, Ga. 9 May. All employees engaged in tank building employed by the employer in its field construction, maintenance and repair operations shall vote for representation by Boilermakers, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2018

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

19 - 23 MAY 1986

NEWARK PUBLIC LIBRARY
(W-2018)
JUN 13 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Bay St. Joseph Care Center	Port St. Joe, Fla.	5
Carpenters Local 925 and Monterey Bay District Council of Carpenters	Castroville/Salinas, Calif.	6
Cincinnati Enquirer, a Div. of Gansat, Inc.	Cincinnati, Ohio	5
Gerkin Co.	Sioux City, Iowa	4
Laurel Lamps Mfg. Co.	Newark, N.J.	4
Metropolitan Teletronics Corp. and Novelties Workers Local 148	New York, N.Y.	3
Rubber Workers Local 250	Wayne, N.J.	8
Safety-Kleen Corp.	Wayne, N.J.	7
Salinas Newspapers, A Div. of Gannett Newspapers	Salinas, Calif.	2
Stephenson Haus	Hazel Park, Mich.	1
(The) Tribune Co.	Warren, Ohio	2
United Technologies Corp.	Southington, Conn.	1

LR 1.15/2:

Wanamaker (John) Philadelphia Philadelphia, Pa. 5

Woodcliff Lake Hilton Inn Woodcliff Lake, N.J. 5

OTHER CONTENTS

List of Decisions of Administrative Law Judges 9

List of Directions of Elections by Regional Directors 10

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

United Technologies Corporation (39-CA-2157; 279 NLRB No. 135) Southington, Conn. 19 May. Chairman Dotson and Member Johansen dismissed allegations that the employer unlawfully maintained and enforced a rule prohibiting the display of large signs promoting a candidacy, organization or product on employee vehicles parked in the company parking lot. Member Dennis, dissenting, would find unlawful maintenance and enforcement of the rule.

An employee had parked his van, with an large union election campaign sign attached, on company property during the workday. The employer instructed him to remove the sign, cover the sign, or remove the van from company property.

Chairman Dotson and Member Johansen held that the employee was engaged in protected concerted activity when he parked the van, with the sign attached, on company property. They pointed out, however, that the rule in question was not a complete prohibition against the display of union material, but a restriction on large signs or banners. The panel majority concluded that the employer's "attempt to establish some decorum, but still permitting the common disp'ay of union materials on employee vehicles," was permissible, and they dismissed the complaint.

Member Dennis noted that the employer furnished no evidence of special circumstances that required restricting employee displays in order to protect managerial rights. In the absence of such evidence, she said, the employer may not impair employee exercise of Act rights on its property in nonwork areas during nonwork time.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Machinists District Lodge 91; complaint alleged violation of the Act's Section 8(a)(1). Parties waived hearing before an adm. law judge.

***

Stephenson Haus (7-CA-23107; 279 NLRB No. 139) Hazel Park, Mich. 19 May. The Board affirmed an administrative law judge's decision that the restaurant operator violated the Act by unilaterally changing employees' terms and conditions of employment, without bargaining with Hotel and Restaurant Employees Local 24.

The judge found that the employer became a successor to Stephenson Club, Inc. on taking over the ownership and control of the unionized restaurant on 1 December 1983. He also noted that on 1 December, it employed all the precedessor's employees. The judge thus concluded that the presumption of the union's continuing majority status attached and the employer was under an obligation to bargain as of its first day of business.

When the employees began working for the employer, the terms and conditions of employment were the same as those they enjoyed under the predecessor, the judge found. He held that, when the employer subsequently

changed wages and terms, it altered its own wages and conditions. The judge said that the employer was in the situation of a unionized company that wanted to make changes in terms and conditions of employment, and that the employer was obligated to notify the union and give it an opportunity to bargain over the changes.

(Members Johansen, Babson, and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 24; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Detroit, 6 October 1984. Adm. Law Judge Walter H. Maloney, Jr.'s decision issued 13 December 1984.

***

Salinas Newspapers, Inc., A Div. of Gannett Newspapers (32-CA-6987; 279 NLRB No. 142) Salinas, Calif. 19 May. Affirming an administative law judge's decision, the Board dismissed allegations that the employer violated the Act by discharging Mark Lopez for engaging in activities for Newspaper Guild Local 98, by interrogating and threatening him, and by posting a notice telling employees that Lopez was discharged for his union activity.

The judge found that Lopez was a managerial employee not protected by the Act.

Concerning the notice, the judge concluded that since the notice truthfully advised employees Lopez was discharged because he violated a policy prohibiting managerial employees from engaging in union activities, its publication did not violate the Act.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Newpaper Guild Local 98; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Salinas, 28-29 May 1985. Adm. Law Judge George Christensen's decision issued 11 February 1986.

***

The Tribune Company (8-CA-14861, et al.; 279 NLRB No. 138) Warren, Ohio. 19 May. The Board affirmed an administrative law judge's decision and supplemental decision dismissing all allegations of employer wrongdoing and overruling all objections to an election held 6 April 1981.

The election resulted in 97 votes for, and 119 against, representation by Electrical Workers (IUE) Local 721, with 12 challenged ballots. The Board accordingly certified that the union did not receive a majority of the valid ballots cast.

Dismissed were allegations that the employer in reponse to the union's campaign interrogated employees, restricted the distribution of union literature, reduced employees' wages or benefits because they were union adherents, and threatened employees with harsher working conditions. In finding no merit to

allegations that the company violated the Act by making unilateral changes in working conditions, the judge noted that the alleged violations were predicated on an obligation on the part of the employer to negotiate with the union. Since the election resulted in the union's defeat, the employer was under no obligation to bargain, the judge held.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Electrical Workers (IUE) Local 721; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Warren on dates in May 1982. Adm. Law Judge James J. O'Meara Jr.'s decision issued 30 December 1983; his supplemental decision issued 16 October 1984.

***

Metropolitan Teletronics Corp. and Novelties Workers Local 148 (2-CA-19571, 19657; 2-CB-9912; 279 NLRB No. 134) New York, N.Y. 19 May. The Board agreed with an administrative law judge that the employer had no statutory obligation to bargain with Furniture Workers Local 140 over its decision to close its New York City facility and relocate to Jersey City, N. J. Members Dennis and Stephens found that the company unlawfully refused to bargain over the effects of its decision; Chairman Dotson would hold the employer satisfied its obligation.

The decision to relocate did not turn on labor costs at the New York City plant and therefore was not a mandatory subject of bargaining, the Board found.

The panel majority held that the company, by concealing its relocation decision from Local 140 until after it began to vacate the New York plant, failed to provide timely notice and denied the union an opportunity to bargain at a time when the union retained at least a measure of bargaining power. It accordingly found an unlawful refusal to bargain in good faith over the effects of the relocation decision.

Chairman Dotson said that the real question was whether the failure to give pre-closure notice to the union by itself presented a per se violation of Section 8(a)(5). He concluded that it did not because he could see no way in which pre-closure notice would have affected the union's ability to extract concessions.

Dismissed were allegations that the employer violated the Act by extending recognition to Novelties Workers Local 148 as representative of employees at the New Jersey plant, and that Local 148 unlawfully accepted recognition.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Furniture Workers Local 140; complaint alleged violation of the Act's Section 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2). Hearing at New York 12-14 October 1983. Adm. Law Judge Raymond P. Green's decision issued 15 June 1984.

Laurel Lamps Mfg. Co., Inc. (22-CA-12441; 279 NLRB No. 137) Newark, N.J. 20 May. Members Johansen and Babson granted summary judgment and held that the employer violated the Act by refusing to abide by its collective-bargaining agreement with Electrical Workers (IBEW) Local 1158 and by unilaterally ceasing to make medical insurance payments and contributions on behalf of its employees. Chairman Dotson dissented.

Summary judgment was granted on employer failure to file an answer to the complaint.

Chairman Dotson would find that the refusal to make medical insurance payments and contributions amounted to nothing more than a contract violation. He would deny summary judgment.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Individual; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 16 January 1984.

***

The Gerkin Co. (18-CA-7205, 18-RC-12930; 279 NLRB No. 136) Sioux City, Iowa. 20 May. Members Dennis and Johansen held, as did an administrative law judge, that the employer violated the Act during the critical preelection period by various threats, interrogations, and maintenance of an overly-broad no-solicitation, no-distribution rule. Since they found the conduct interfered with the 17 March 1981 election,they set aside that election and directed a new one to determine employee desire for representation by Machinists District Lodge 162. Chairman Dotson dissented in part.

The panel majority agreed with the judge that the employer violated the Act by informing employees during the organizing campaign that benefits could not change, that the traditional May merit wage increase was being "frozen," and that the employer could not carry out its intent to improve their health insurance coverage until after the election. The statement referring to the withholding prior to the election is contrary to the Board's well-established rule that during the preelection period an employer must grant or withhold benefits as if the union were not in the picture, it said.

The only instance of misconduct during the preleection period that Chairman Dotson would find was the maintenance of an overly broad no-solicitation, no-distribution rule. He would not set aside the election.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Machinists District Lodge 162; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 9 February 1982 at Sioux City. Adm. Law Judge Leonard M. Wagman's decision issued 25 June 1982.

***

Bay St. Joseph Care Center (15-CA-9860; 279 NLRB No. 141) Port St. Joe, Fla. 22 May. The Board granted summary judgment and held that the employer violated the Act by refusing to bargain with the Steelworkers and by refusing to provide the union with information it requested concerning unit employees and their terms and conditions of employment.

Summary judgment was granted on a finding that the employer raised no issue properly litigable in this proceeding.

(Chairman Dotson and Members Johansen and Babson participated,)

Charges filed by the Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 6 February 1986.

***

The Cincinnati Enquirer, Inc., a Div. of Gansat, Inc. (9-CA-21718, 21932; 279 NLRB No. 149) Cincinnati, Ohio. 21 May. The Board affirmed an administrative law judge's decision that the employer violated the Act by unilaterally changing the duties of the wire manager and the pay of the bargaining unit members who substituted for and performed the duties of the wire manager, and by unilaterally assigning bargaining unit work to a supervisor, without bargaining with Newspaper Guild Local 9.

The Board also concurred with the judge's finding that the employer discriminatorily denied the union access to company-owned employee mailboxes, while permitting employees and other organizations to use the mailboxes to distribute literature. It disagreed, however, with his recommended remedy that the employer be required to reimburse the union for postal expenses incurred in the mailing of its literature to members. A "sufficient nexus" did not exist between the discriminatory conduct of the employer and the postal expenses incurred by the Guild, the Board said.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Newspaper Guild local 9; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Cincinnati, 26 June 1985. Adm. Law Judge John H. West's decision issued 21 August.

***

Woodcliff Lake Hilton Inn, Inc. (22-CA-12524; 12602; 279 NLRB No. 146) Woodcliff Lake, N.J. 22 May. Members Dennis and Stephens adopted an administrative law judge's finding that the company unlawfully subjected an employee to personal harassment and then suspended her and another worker in order to discourage employees from supporting Hotel and Restaurant Employees Local 69. Chairman

Dotson would dismiss the allegation of unlawful personal harassment as well as some allegations of unlawful interrogation.

Concerning the personal harassment issue, the panel majority found that an incident in which union adherent Brigitta Bodner was subjected to a no-smoking restriction not imposed on other employees was one in a series of incidents in which the company's catering director singled out Bodnar for unfavorable treatment. It is that whole series, Members Dennis and Stephens stated, that supported a provision in the Board's remedial order prohibiting the employer from subjecting employees to personal harassment in order to discourage support for the union.

Chairman Dotson would find that the director of catering, through his various actions towards Bodner, was expressing no more than his personal dislike for her.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 69; complaint alleged violation of the Act's Section 8(a)(1) and (3). Adm. Law Judge James F. Morton's decision issued 14 December 1984.

***

Carpenters Local 925 and Monterey Bay District Council of Carpenters (32-CA-5760; 279 NLRB No. 145) Castroville/Salinas, Calif. 22 May. The Board affirmed an administrative law judge's decision that the employer, Local 925, unlawfully discharged Charlene Seier because she sought representation by the Office and Professional Employees.

The judge found that the District Council did not share any responsibility for the termination of Seier. The Board thus dismissed allegations of wrongdoing by the District Council.

Assertions by the Local that it discharged Seier because of financial considerations or "dissension" among the Local's members were rejected by the judge. He found that what motivated the Local's executive committee to dismiss Seier was its anger at her having sought union representation and its desire to moot the directive of the membership to negotiate and execute a contract covering Seier's job.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Charlene Seier, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Adm. Law Judge Burton Litvack's decision issued 8 July 1985.

***

John Wanamaker Philadelphia (4-CA-11357, 11749; 279 NLRB No. 140) Philadelphia, Pa. 22 May. Contrary to an administrative law judge, the Board did not find that the employer unlawfully refused to sign an agreement with Teamsters Local 115. Members Dennis and Johansen held, as did the judge, that the company violated the Act by refusing to negotiate economic issues with the union until agreement was reached on all noneconomic matters; and by unilaterally suspending its customary annual wage review, withholding benefits, and refusing to grant its 1980 wage increase. Chairman Dotson dissented on these findings.

The Board found that the parties had not reached complete agreement on 2 January 1981. It noted that the company's negotiation minutes and documents showed that the company had objections to the contract proposal that were neither expressed nor resolved at the 2 January meeting. It thus dismissed allegations of unlawful refusal to sign an agreed-upon contract.

In finding unlawful refusal to discuss economics, the panel majority said: "We find the Respondent's inordinately rigid approach to bargaining squarely at odds with the type of bargaining contemplated by the Act." It noted that for over six months, the employer took the position that economic matters would not be discussed until the union agreed to no-strike and binding arbitration provisions.

Chairman Dotson would find that the employer lawfully engaged in hard bargaining.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 115; complaint alleged violation of the Act's Section 8(a)(1), (3), (5) and 8(d). Hearing at Philadelphia, on dates in May and June 1981. Adm. Law Judge Sidney J. Barban's decision issued 25 September 1981.

***

Safety-Kleen Corp. (9-CA-22287; 279 NLRB No. 159) Hamilton, Ohio. 23 May. Members Babson and Stephens affirmed an administrative law judge's dismissal of allegations that the employer unlawfully discharged Arthur Wilson on 9 October 1984 because it believed he was involved with a union. The complaint was dismissed because the charges were filed on 13 August 1985, a date which fell outside the six-month limitations period for the filing of charges. Member Dennis dissented.

The panel majority noted that Wilson knew of facts that would create a suspicion sufficient to warrant his filing the unfair labor practice charges within six months of his discharge.

Member Dennis would find that Wilson had no reason at the time of his discharge to suspect that the employer fired him for union conduct. She would find that the six-month limitation period did not begin running until Wilson's meeting with his former supervisor in April 1985, when , she said, Wilson first had reason to suspect his discharge violated the Act. She would remand the proceeding to the admimistrative law judge for further action.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Arthur Wilson, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (30. Hearing at Cincinnati, 30 october 1985. Adm. Law Judge Richard L. Denison's decision issued 12 December.

***

Rubber Workers Local 250 (22-CB-4927: 279 NLRB No. 165) Wayne, N.J. 22 May. The Board held that the union unlawfully breached its duty of fair representation to David O'Neill by arbitrarily refusing to process his grievance over warnings leading to his discharge. Chairman Dotson and Members Johansen and Babson ordered the union to ask the employer to reinstate O'Neill. If the employer refuses to do so, the union shall process the grievance, and if it is not possible to pursue the remaining stages of the grievance procedure, the union is to make O'Neill whole for loss of pay. Member Dennis would hold that the General Counsel should prove the grievance is meritorious before the Board assesses backpay liability against the union.

The majority noted that the uncertainty over the merits of O'Neill's grievance derived from the union's breach of its duty, which prevented resolution of the grievance in the first instance. It stated "In the absence of evidence warranting a finding that the grievance lacks merit, and in order to restore the status quo existing before the Respondent union violated the Act by precluding the grievance's proper resolution, we resolve any uncertainty in favor of the victim and against the wrongdoer."

Member Dennis would find that if the grievance is not meritorious, a make-whole remedy is inconsistent with the fundamental requirement that the Board restore only actual losses.

(Chairman Dotson and Members Dennis, Johansen and Babson participated.)

Charges filed by the Tool, Die and Mold Makers; complaint alleged violation of the Act's Section 8(a)(b)(1)(A). Hearing 23-24 January 1984. Adm. Law Judge Howard Edelman's decision issued 13 April 1984.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Fleenor's, Inc. (Food and Commercial Workers Local 1439), Wenatchee, Wash. 30 April. 19-CA-17623; JD(SF)-044-86, James S. Jenson, Adm. Law Judge.

Food and Commercial Workers (Western Employer Associates), San Francisco, Calif. 30 April. 20-CB-6521; JD(SF)-047-86, William J. Pannier, III, Adm. Law Judge.

Colorado-Ute Electric Association (Electrical Workers (IBEW) Local 111), Montrose, Colo. 30 April. 27-CA-8959, 8981; JD (SF)-042-86; Adm. Law Judge Gordon J. Myatt, Adm. Law Judge.

Plumbers Local 460 (Individual), Bakersfield, Calif. 30 April. 31-CB-6416; JD(SF)-045-86, Burton Litvack, Adm. Law Judge.

Edwin R. O'Neill, An Individual, et al. (Food and Commercial Workers Local 126 and Teamsters Local 431), Fresno, Calif. 30 April. 32-CA-848, 928; JD(SF)-048-86, William L. Schmidt, Adm. Law Judge.

Las Vegas Paving Corp. (Individual) Las Vegas, Nev. 1 May. 31-CA-15443; JD(SF)-49-86, Gerald A. Wacknov, Adm. Law Judge,

Quality Inn-Lax (Hotel and Restaurant Employees Local 814) Los Angeles, Calif. 2 May. 31-CA-15077; JD(SF)-043-86, Earldean V.S. Robbins, Adm. Law Judge.

Italo I and II Casa Romana Restaurant, Inc. (Hotel and Restaurant Employees Local 8) Seattle, Wash. 6 May. 19-CA-17343, et al.; JD(SF)-50-86, Timothy D. Nelson, Adm. Law Judge.

Best Western Motor Inn (Individuals), Mount Vernon, Wash. 6 May. 19-CA-17628; JD(SF)-046-86, Joan Wieder, Adm. Law Judge.

St. Agnes Medical Center (Hospital and Health Care Employees District 1199C), Philadelphia, Pa. 16 May. 4-CA-14407, et al., 4-RD-1172; JD-113-86. Frank H. Itkin, Adm. Law Judge.

Opelika Foundry (Molders) Opelika, Ala. 19 May. 10-CA-21336, 21405; JD(ATL)-39-86, William N. Cates, Adm. Law Judge.

Retail, Wholesale Department Store Union Local 1199 (Individuals) New York, N.Y. 20 May. 2-CB-10529, et al.; JD(NY)-41-86. Joel P. Biblowitz. Adm. Law Judge.

Pottsville Bleaching and Dyeing Company (Teamsters Local 115), Port Carbon, Pa. 20 May. 4-CA-15420, JD-129-86, Benjamin Schlesinger, Adm. Law Judge.

The Little Cafe, Inc. (Hotel and Restaurant Employees local 24), Detroit, Mich. 20 May. 17-CA-22046; JD-135-86, Norman Zankel. Adm. Law Judge.

Columbia Textile Services, Inc, (Cothing and Textile Union Local 1733 and Individual) Paterson, N.J. 20 May. 22-CA-13089, et al, 22-RC-9136; JD(NY)-38-96,

Howard Edelman, Adm. Law Judge.

Marine and Shipbuilders (Bethlehem Steel Corp.) Baltimore, Md. 21 May. 5-CB-4635(E), et al.; JD-131-86, David L. Evans, Adm. Law Judge.

Valley Kitchens, Inc. (Carpenters Local 415), Lebanon, Ohio. 21 May. 9-CA-22271, 22428; JD-134-86, Peter E. Donnelly, Adm. Law Judge.

Blue Cross Blue Shield of Michigan (Individuals) Detroit, Mich. 21 May. 7-CA-24555; JD-133-86. Nancy M. Sherman, Adm. Law Judge.

Sheet Metal Workers Local 80 (Individual), Warren, Mich. 21 May. 7-CB-6531; JD-137-86. Thomas R. Wilks, Adm. Law Judge.

Thompson Boat Company (Carpenters), St. Charles, Mich. 21 May. 7-CA-25060, 7-RC-17607; JD-132-86, Donald R. Holley, Adm. Law Judge.

Auto Workers Local 785 (The Dayton Forging & Heat Treating Company), Dayton, Ohio. 21 May. 9-CB-6261; JD-136-86, Burton S. Kolko, Adm. Law Judge.

Greenleaf Motor Express, Inc. Ashtabula Chemical Corp. (Teamsters Local 377), Ashtabula, Ohio. 22 May. 8-CA-17792, 18146; JD-138-86, Thomas A. Ricci, Adm. Law Judge.

Food and Commercial Workers Local P-9 (Geo. A. Hormel Company) Austin, Minn. 22 May. 18-CB-1563, 1564; JD-125-86, Benjamin Schlesinger, Adm. Law Judge.

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases, In some, requests for review may be filed with the Board.)

Thrust Industries, Inc. 25-RC-8328), Gibson County, Ind. 15 May. Production and maintenance employees shall vote for representation by the Electrical Workers (IUE), or for no representation.

French Rags, Inc. (31-RC-6028), Los Angeles, Calif. 16 May. Production and maintenance employees shall vote for representation by the Korean Labor Association; by California Joint Board, Clothing and Textile Workers; or by neither.

Chicago Educational Television Association (WTTW) (13-RC-16864) Chicago, Ill. 6 May. Mailroom employees shall vote for representation by Broadcast Employees and Technicians (NABET), or for no representation.

Erected Steel Products, Inc. (10-RC-13281) Atlanta, Ga. 9 May. Employees engaged in tank building shall vote for representation by the Boilermakers, or for no representation.

Beatty Motors Inc. (3-RC-8877) Niagara Falls, N.Y. 7 May. Service employes shall vote for representation by the Auto Workers and its Local 55, or for no representation.

W-2011

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W 2019

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

26 - 30 MAY 1986 (W-2019)

DETROIT PUBLIC LIBRARY
JUN 23 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Apex Corp.	Great Falls, Mont.	4
Arizona Pork Products	Phoenix, Ariz.	10
Armon Co.	Bensalem, Pa.	15
Atlas Truck Rental and Leasing	Wyoming, Mich.	11
Browning Manor Convalescent Hospital	Delano, Calif.	6
Boaz Carpet Yarns, Inc.	Boaz, Ala.	11
CATV Service Co., Inc., A Subsidiary of Storer Communications, Inc.	Port Murray, N.J.	1
Cemetery Service Corp.	Peoria, Ill.	2
Cliffside Health Care Center	Cliffwood Beach, N.J.	5
Computer Sciences Corp. and E G & G Florida, Inc.	Kennedy Space Center, Fla.	16
Delta Data Systems Corp.	Philadelphia, Pa.	12
G. T., Inc.	Boston, Mass.	3
Gemco	Bakersfield, Calif.	5
Greyhound Taxi Co., Inc.	Sacramento, Calif.	1
Ground Breakers, Inc.	Clarksburg, W. Va.	13

LR 1.15/2:

Guards Local 1 (Stevedoring Services of America)	Los Angeles, Calif.	4
Handy Spot, Inc.	Los Angeles, Calif.	9
Hornby (Judy) Designs	New York, N.Y.	9
Lemay Caring Center and Dasal Caring Centers, Inc.; Walton Caring Center	St. Louis, Mo.	14
Micronesian Telecommunications Corp.	Northern Mariana Islands	1
Mid-State Distributing Co.	Lexington, Ky.	5
New England Telephone and Telegraph Co.	Boston, Mass.	10
Parkview Gardens Care Center	Waterloo, Iowa	14
Pit Stop Markets	Salem, Ore.	3
Pittsburgh Testing Laboratory	Bay City, Tex.	14
Plateau Coal Sales, Inc.; Mine Workers; Mine Workers District 29; Mine Workers Local 6046	Summerlee, W. Va.	8
Rockford Manor Intermediate Care Facility	Shively, Ky.	7
Sandpiper Convalescent Center and Sandpiper Village	Mt. Pleasant, S.C.	6
Sea-Pac, Inc. and Dahl Fish	Bellingham, Wash.	2
Shamrock (Dorothy) Coal Co.	Indianapolis, Ind.	15
Texaco, Inc.	Lockport, Ill.	7
Times Wire and Cable Co.	Chatham, Va.	13

Timsco, Inc.	Washington, D.C.	2
Trover Clinic	Madisonville, Ky.	11
Unifirst Corp.	Watervliet, N.Y.	4

OTHER CONTENTS

List of Decisions of Administrative Law Judges 17

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

CATV Service Company, Inc. A Subsidiary of Storer Communications, Inc. (22-CA-13395; 279 NLRB No. 148) Port Murray, N.J. 23 May. The Board affirmed an administrative law judge's dismissal of allegations that the employer discharged Janice Mason, in violation of the Act, because of her activities for Electrical Workers (IBEW) Local 827.

The judge found that Mason would have been discharged, even in the absence of union activities, for failure to provide budget information on time.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Electrical Workers Local 827; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Newark on dates in December 1984 and February 1985. Adm. Law Judge D. Barry Morris' decision issued 8 November 1985.

***

Micronesian Telecommunications Corporation (37-CA-2370; 279 NLRB No. 151) Northern Mariana Islands, 23 May. Granting summary judgment, the Board held that the employer unlawfully refused to bargain with Electrical Workers (IBEW) Local 1357, the certified representative of the company's employees on the islands of Saipan, Rota, and Tinian.

Summary judgment was granted on a finding that all issues raised were or could have been raised in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Electrical Workers (IBEW) Local 1357; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 13 November 1985.

***

Greyhound Taxi Co., Inc. (20-CA-10868, et al.; 279 NLRB No. 144) Sacramento, Calif. 23 May. The Board adopted an administrative law judge's computation of the backpay due Harold L. Wakefield. The judge had found that Wakefield incurred no willful loss of earnings during a period of psychological disability, and that the employer was responsible for that disability and for backpay for that period.

The Board in a 1985 supplemental decision and order (274 NLRB No. 60) had modified the judge's recommended order by limiting Wakefield's backpay to the period of his minor physical injuries, excluding the period of psychological disability that followed his physical recovery. On 9 January 1986, the United States Court of Appeals for the Ninth Circuit held that Wakefield was entitled to backpay for the entire period of his psychological disability, which the court found was caused by the employer's unlawful conduct.

(Chairman Dotson and Members Dennis and Stephens participated.)

Sea-Pac, Inc. and Dahl Fish Company (19-CA-14460, 14336; 279 NLRB No. 150) Bellingham, Wash. 23 May. The Board agreed with an administrative law judge that the single employer violated the Act by unilaterally reducing employees' benefits and by laying off employees and replacing them with nonunion employees after the unionized workers refused to accept a midterm contract wage reduction.

Relying on Otis Elevator, the Board found that in light of the finding of single employer status, the layoff of Dahl's union employees and the transfer of unit work to Sea-Pac's nonunion employees amounted to a transfer of work from one group of employees to another. Since the company proferred no reason for its layoff and transfer other than labor costs, the decision did not amount to a change in the scope, direction or nature of the business and was a mandatory subject of bargaining, it said. Thus, the unlateral implementation of that decision violated the Act.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Food and Commercial Workers Local 44; complaint alleged violation of the Act's Section 8(a)(1), (3), (5) and 8(d). Hearing at Bellingham on dates in April and July 1983. Adm. Law Judge Joan Wieder's decision issued 30 December 1983; her supplemental decision issued 30 September 1985.

***

Cemetery Service Corporation (33-CA-7406; 279 NLRB No. 152), Peoria, Ill. 27 May. Granting summary judgment, the Board held that the employer violated the Act by changing its group insurance plans, during midterm of a contract, without notifying or obtaining the consent of Teamsters Local 627. Summary judgment was granted on the employer's failure to file a timely answer to the complaint.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Teamsters Local 627; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 20 December 1985.

***

Timsco, Inc. (5-CA-17508; 279 NLRB No. 155) Washington, D.C. 27 May. The Board held that the employer violated the Act by refusing to bargain with Graphic Communications Local 285 regarding a union grievance over the discharge of Louise Robinson. Finding that all issues were or could have been raised in the underlying representation proceeding which resulted in the union's certification, it granted summary judgment.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Graphic Communications Local 285; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 10 January 1986.

***

G.T., Inc. (1-CA-23136; 279 NLRB No. 162) Boston, Mass. 29 May. On motion for summary judgment, the Board found the employer violated the Act by failing to provide the Clothing and Textile Workers, New England Regional Joint Board, with information the union requested and by refusing to bargain.

The employer also unlawfully subcontracted unit work, changed employees' wages and benefits without bargaining with the union, and refused to pay money due employees under an arbitration award, the Board held.

Summary judgment was granted after the employer failed to file an answer to the complaint.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by the Amalgamated Clothing and Textile Workers Union, New England Regional Joint Board; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 6 February 1986.

***

Pit Stop Markets (36-RC-4571; 279 NLRB No. 161) Salem, Ore. 27 May. Affirming a Regional Director's findings, the Board asserted jurisdiction over the operator of a retail gas station and convenience grocery store.

Western States, which provides the gas, remits a commission to the employer for each gallon sold. The employer's gross volume of sales in gasoline is about $1 million, for which the employer receives approximately $43,000.

In finding that the employer satisfied the Board's gross volume of business standard for asserting jurisdiction over retail operations, the Regional Director included the gross volume of gasoline sales at the establishment. The employer argued that the value of its gasoline service is approximately $43,000 (the commissions it receives) and that this amount coupled with the $100,000 from its grocery operations is not sufficient to meet the Board's jurisdictional standards for retail enterprises.

The Board pointed out that it is the amount of gross volume sales to which it looks in determining jurisdiction, not some other yardstick. Therefore, since the employer's gross volume of sales exceeds the Board's $500,000 standard, the Board asserted jurisdiction.

(Members Dennis, Johansen, Babson and Stephens participated.)

Guards Local 1 (Stevedoring Services of America) (21-CD-543, 544; 279 NLRB No. 171) Los Angeles, Calif. 30 May. The Board held that employees represented by Guards Local 1 are entitled to protect, watch, and safeguard all property in sheds, on docks, or in adjacent cargo storage areas at the Indies Terminal Company facility located at Berths 215-224, Terminal Island, California.

The dispute arose when the president of Longshoremen's and Warehousemen's Local 26 told Indies officials that she might picket "or do whatever she had to" if Indies refused to honor an arbitration award in favor of Local 26.

The Board noted the danger that, where guards and nonguards of the same employer belong to the same union, the conflict of loyalties created will interfere with the duties of the guards vis-a-vis their fellow union members. The Board found that this factor favored an award to employees represented by Local 1 since they are not faced with the conflict of loyalties that exists for members of Local 26.

(Members Johansen, Babson and Stephens participated.)

***

Unifirst Corporation (3-CA-13044; 280 NLRB No. 8) Watervliet, N.Y. 30 May. Granting summary judgment, the Board held unlawful the employer's refusal to bargain with Teamsters Local 669, the certified collective-bargaining representative of production and maintenance employees.

The Board found that all issues raised were, or could have been, raised in the underlying representation proceeding.

(Membes Dennis, Babson and Stephens particiapted.)

Charges filed by Teamsters Local 669; complaint alleged violation of the Act's Section 89a)(1) and (5). General Counsel's motion for summary judgment filed 7 March 1986.

***

Apex Insulation (19-CA-17918; 279 NLRB No. 176) Great Falls, Mont. 30 May. The Board held the employer violated the Act by discharging three employees for their protected concerted activity in claiming per diem and correct wages under the Area Contract to which the company and Asbestos Workers Local 82 were bound.

Summary judgment was granted on employer failure to file an answer to the complaint.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Ron Clemons, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). General Counsel's motion for summary judgment filed 14 February 1986.

***

Cliffside Health Care Center (22-CA-11659; 279 NLRB No. 166) Cliffwood Beach, N.J. 27 May. Affirming an administrative law judge's decision, the Board held the employer violated the Act by implementing changes in employees' wages and benefits on 3 October 1981, without giving adequate notice to 1115 Nursing Home and Hospital Employees Union.

The judge found that the parties were not at impasse in their negotiations when the employer implemented the changes. He also held that the two-day notice the employer gave of a wage increase and an additional holiday was not sufficient.

(Members Johansen, Babson and Stephens participated.)

Charges filed by 1115 Nursing Home and Hospital Employees Union, a Div. of 1115 Joint Board; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Newark, 9 February 1983. Adm. Law Judge D. Barry Morris' decision issued 9 February 1983.

***

Mid-State Distributing Co., Inc. (9-CA-22675; 279 NLRB No. 175) Lexington, Ky. 30 May. The Board granted summary judgment and held the employer violated the Act by refusing to bargain with Teamsters Local 651 and by refusing to provide the union with information it requested concerning unit employees and their terms and conditions of employment.

The Board found the employer raised no issue properly ligitable in this proceeding.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 651; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 3 February 1986.

***

Gemco (31-CA-12999; 279 NLRB No. 153) Bakersfield, Calif. 29 May. Members Dennis and Babson agreed with an administrative law judge that the employer violated the Act when Warehouse Manager Richard Jaramillo interrogated Richard Martinez about his conversation with a Teamsters Local 87 representative, but they dismissed allegations that Jaramillo's remarks also created an unlawful

impression of surveillance. Chairman Dotson, dissenting in part, would find that the questioning was so minimal that it would not serve the purposes of the statute to find a violation.

The panel majority noted that Martinez met with the union representative in an open area on the company's premises, in front of the security desk. Members Dennis and Babson said: "where remarks are made by an employer concerning an openly held meeting between the union representative and an employee, it is unreasonable for an employee to assume that the employer acquired knowledge of the meeting through surveillance."

Chairman Dotson said that the allegation of unlawful interrogation concerned a single incident involving a single employee who left his job less than two weeks later. He would hold that the isolated incident could not have a reasonable tendency to interfere with protected rights.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 87; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Bakersfield, Calif. 11 August 1983. Adm. Law Judge Willam J. Pannier's decision issued 29 September 1983.

***

Browning Manor Convalescent Hospital (31-CA-11262; 279 NLRB No. 172) Delano, Calif. 29 May. Concurring with an administrative law judge's decision, the Board dismissed allegations that the employer unlawfully refused to offer reinstatement to striking employees after Service Employees Local 250 representative Juan Garza allegedly made an unconditional offer on their behalf to return to work.

The judge found that an unconditional offer to return to work was not made at any time. He credited testimony by executive vice president Lonnie Devine that Garza undercut his "unconditionally" voiced offer that strikers return to work by attaching conditions that the employer promptly reinstate all strikers, including a supervisor who had been discharged.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Service Employees Local 250; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Bakersfield, 29 June-4 August 1982. Adm. Law Judge David G. Heilbrun's decision issued 9 November 1982.

***

Sandpiper Convalescent Center and Sandpiper Village (11-CA-11557, 11708; 279 NLRB No. 147) Mt. Pleasant, S.C. 29 May. The Board affirmed an administrative law judge's decision that the employer violated the Act by refusing to bargain with Hospital and Health Care Employees District 1199 and by unilaterally laying off six

unit employees without notifying the union.

The judge found that the layoffs occurred after the union had been selected by employees in a Board-conducted election, at a time when the employer was obligated to bargain. He also found no compelling economic considerations to justify the company's unilateral action in laying off the employees.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Hospital and Health Care Employees District 1199; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Charleston, 20 June 1985. Adm. Law Judge Thomas D. Johnston's decision issued 3 September.

***

Texaco, Inc. (13-CA-20153; 279 NLRB No. 163) Lockport, Ill. 30 May. Applying standards set forth in Olin Corp., 268 NLRB 573 (1984), the Board deferred to an arbitrator's decision that the suspensions of two employees for strike misconduct were for good cause, but their discharges were not.

In dismissing the complaint, the Board concluded that the contractual and the unfair labor practice issues--whether the imposition of discipline was justified--were factually parallel in the two proceedings. It also found that both the arbitrator and the administrative law judge were presented with evidence concerning the alleged actions of the two employees, the circumstances surrounding their activities, and the impact of their action on other persons present. Moreover, the arbitration award was in no way repugnant to the purposes of the Act, it said.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Hospital and Health Care Employees District 1199; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Charleston 20 June 1985. Adm. Law Judge Thomas D. Johnston's decision issued 3 September.

***

Rockford Manor Intermediate Care Facility (9-CA-22178; 279 NLRB No. 170) Shively, Ky. 29 May. Affirming an administrative law judge, the Board dismissed a refusal to bargain allegation stemming from the employer's unilateral decision to substitute a new health insurance program for the one that was in effect when the parties agreed to a contract.

During the contract's term, the health carrier notified the employer of a steep rate increase under the existing plan and offered a nominal increase under a new program. The company chose the new program. The modest increase would be shared equally by the employer and employees, as was customary. The union was given no voice in the decision and was unaware of the change until after it went into effect.

The judge pointed out that the parties did not specifically address the issue of mid-term adjustments in the health program during negotiations. He found they committed unresolved issues to management prerogatives as they existed upon entry of the agreement.

Member Dennis concurred in the result, finding it unnecessary to rely on the judge's analysis of the contract's "zipper clause" and management-rights clause.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 89; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Louisville 17 September 1985. Adm. Law Judge Joel A. Harmatz' decision issued 8 November.

***

Plateau Coal Sales, Inc.; Mine Workers; Mine Workers District 29; Mine Workers Local 6046 (9-CA-17947, 9-CB-5170; 279 NLRB No. 156) Summerlee, W. Va. 29 May. The Board adopted the administrative law judge's conclusion that the employer unlawfully sought to induce employees to work without union representation, and withdrew offers of employment from its entire work force when the employees refused to work nonunion. Contrary to the judge, however, the panel ruled that a bargaining order is required to remedy the employer's misconduct.

Respondent Plateau purchased the facilities from Summerlee Coal, which had operated under a contract with the union. Plateau agreed to hire from Summerlee's seniority list and offered jobs to five men who passed physical examinations. But Plateau reneged on the offers after the men refused its demand to work nonunion. After the company began operations with a nonunion crew, the union set up a picket line. The next day, 14 of Summerlee Coal's 15 former employees signed authorization cards.

In calling for a bargaining order, the Board rejected the judge's argument that since the five discriminatees were union activists, traditional remedies of reinstatement and backpay would be sufficient. "The Board has never ordered or withheld a bargaining remedy based on the perceived strength of the individual employee's union sentiments," it stated.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Mine Workers District 29 and Plateau Coal Sales, Inc.; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5) and 8(b)(1)(A). Hearing at Beckley 28-30 June and 1 July 1982. Adm. Law Judge Irwin Kaplan's decision issued 14 December 1982.

***

Judy Hornby Designs, Inc. (2-CA-18487; 279 NLRB No. 168) New York, N.Y. 30 May. The Board upheld the main finding of an administrative law judge that the employer violated the Act by threatening to close operations if the employees chose the union as their collective bargaining agent.

A panel majority of Chairman Dotson and Member Johansen, however, rejected the judge's finding that the employer terminated employee Aldofina Lorenzo because of union activities. They concluded that that employee voluntarily interrupted her employment by deciding to take a month off after giving only a few hours notice.

Chairman Dotson and Member Johansen also rejected the judge's finding that a bargaining order was warranted. They stated that the employer's threat to close the shop was "a heated and isolated reaction to a forcible entry by union representatives onto the Respondent's premises rather than a claculated threat to unit employees that would tend to undermine majority strength and impede the election process."

Dissenting in part, Member Dennis would adopt the judge's finding in all material respects, including his findings that employee Lozano was unlawfully discharged and that a remedial bargaining order is warranted.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Ladies' Garment Workers Local 23-25; complaint alleged violation of the Act's Section 8(a)(1), (3) and (50. Hearing at New York, 9-11 March 1983. Adm. Law Judge Joel P. Biblowitz' decision issued 21 June 1983.

***

Handy Spot, Inc. (310CA-12324, 12539; 279 NLRB No. 177) Los Angeles, Calif. 30 May. The Board affirmed an administrative law judge's decision that the distributor of sundries to convenience stores violated the Act by unilaterally transferring bargaining unit work and subcontracting delivery routes to independent contractors, without bargaining with Teamsters Local 848 over the effects of its decision.

The judge rejected the employer's argument that the union was aware of the route changeovers and never demanded bargaining about the effects, thus acquiescing in the employer's subcontracting action. He concluded that a bargaining request would have been futile and that a finding of waiver was not possible.

The Board accompanied a bargaining order with a limited backpay requirement "to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent."

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 848; complaint alleged violation of the Act's Section 8(a)(1) and (5). Adm. Law Judge Harold A. Kennedy's decision issued 27 December 1985.

***

New England Telephone and Telegraph Company (1-RC-18341, 18568; 280 NLRB No. 16) Boston, Mass. 30 May. The Board found inappropriate two petitioned-for units of employees: one, a district-wide unit of non-management employees in the employer's business marketing department; the other, a district-wide unit of non-management employees in the residence marketing department.

While each of the units does constitute an administrative subdivision of the employer's operations, the Board said, in neither case have the unions shown that employees in the respective subdivisions share a sufficiently distinct commmunity of interest to warrant bargaining on less than a system-wide basis. It held that the smallest appropriate unit is a system-wide unit for each department.

The Board dismissed petitions filed by Electrical Workers (IBEW) Locals 2222, 2323, 2324 and 2325, and vacated an election held in the residence marketing unit.

(Chairman Dotson and Members Johansen and Babson participated.)

***

Arizona Pork Products, Inc. (28-CA-7343; 279 NLRB No. 167) Phoenix, Ariz. 30 May. Agreeing with an administrative law judge, the Board held unlawful the employer's refusal to bargain with Food and Commercial Workers Local 99R.

On the day Food and Commercial Workers Local 448 filed an election petition, the employer signed a contract with the Teamsters covering the same employees as the petition. An election was held with both Local 448 and the Teamsters on the ballot; a second run-off election resulted in a victory by Local 448. Subsequently, Local 448 merged with Food and Commercial Workers Local 99R.

The employer defended its refusal to bargain on the basis of its contract with the Teamsters, its assertion that the first runoff election was valid, and a contention that the ballot secrecy in the merger election was inadequate. The Board found no merit to those arguments, concluding that none of these defenses justified the employer's refusal to bargain.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Food and Commercial Workers Local 99R; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Phoenix, 4 August 1983. Adm. Law Judge Richard J. Boyce's decision issued 30 September 1983.

***

Trover Clinic (9-CA-18469; 280 NLRB No. 2) Madisonville, Ky. 30 May. The Board agreed with an administrative law judge that the employer unlawfully disciplined and discharged Donna Gibson because of her activities for the Communications Workers.

Members Dennis and Johansen also held unlawful a statement to Gibson that distribution of a cartoon--which they found was related to work conditions--could result in discharge. The cartoon said "I've been beaten, kicked, lied to, cussed at, swindled, taken advantage of and laughed at, but the only reason I hang around this place is to see what happens next!" Dissenting on this issue, Chairman Dotson stated: "I do not understand--and my colleagues certainly do not explain--how the cartoon's references to beating, kicking, lying, cursing, swindling, exploiting, and ridiculing have any relationship whatsoever to working conditions at the clinic."

Contrary to Members Dennis and Johansen, Chairman Dotson did not find that statements to Gibson about "keeping a low profile" and "be quiet with it" were unlawful threats of unspecified reprisals. The panel majority found that the remarks referred to Gibson's organizing activity.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by the Communications Workers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Madisonville, 1-2 February 1983. Adm. Law Judge Steven M. Charno's decision issued 22 August 1983.

***

Atlas Truck Rental & Leasing (7-CA-24206; 280 NLRB No. 6) Wyoming, Mich. 30 May. Concurring with an administrative law judge, the Board held that the employer terminated Anthony Joseph Long because of his efforts to organize his fellow employees.

The judge found that the employer knew of Long's union activities and witheld consideration of Long's request for a wage increase because of those activities. When they continued, the judge said, the employer seized on an alleged "quit" by Long to get rid of him. He found, however, that Long did not in fact "quit," but rather was discharged in violation of the Act.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Anthony Joseph Long, an Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Grand Rapids, 19-20 June 1985. Adm. Law Judge Benjamin Schlesinger's decision issued 23 October.

***

Boaz Carpet Yarns, Inc. (10-CA-20281, 20369; 280 NLRB No. 4) Boaz, Ala. 30 May. The Board dismissed a complaint against the employer for engaging in what the union charged was surface bargaining and then withdrawing recognition after a company poll showed a substantial majority of employees voted against continued

representation by the union.

The majority opinion by Chairman Dotson and Member Dennis noted that the parties met, conferred, and exchanged requested information on 13 separate occasions over a 12-month period. Although each party took vigorous stands on proposals, neither party refused to discuss proposals and counter proposals.

The obligation to bargain under the Act in good faith, the majority opinion stated, "does not require the parties to agree on proposals, for the Act does not compel an employer or employee representative to make a concession on a specific issue or adopt a particular position."

Member Johansen concurred and dissented in part. He agreed that the employer did not engage in surface bargaining. He also agreed that withdrawing recognition was not a violation but only on the basis of a petition that preceded the employer poll in which 97 out of about 130-140 unit employees indicated they no longer wished to be rerpesentated by the union. He would find unlawful an employer notice announcing the poll in that "it implicitly promised employees increased wages and/or benefits for rejection of the union."

(Chairman Dotson and Members Dennis and Johansen participated)

Charges filed by the Clothing and Textile Workers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Parties waived hearing before an administrative law judge.

***

Delta Data Systems Corp. (4-CA-13041, 4-RC-15054; 279 NLRB No. 169) Philadelphia, Pa. 30 May. The Board adopted an administrative law judge's finding that the employer violated the Act by discharging four employees who had been active in the union's organizing campaign. Accordingly, it ordered that a second election be held.

The four union activists were discharged as part of a mass layoff of 27 employees that was caused by economic problems the company was having. Evidence revealed that in the past the company always had selected employees for layoffs on the basis of seniority. In this instance, however, the four employees at issue were found to have been selected on the basis of their union activities.

The judge also found that the company violated the Act by granting benefits to employees during the pre-election campaign to discourage union support; threatening employees that time motion studies would be conducted and that slow-working employees would be fired if the union won the election; and threatening to close the facilities if the employees selected the union.

(Members Dennis, Johansen and Stephens participated.)

Charges filed by Teamsters Local 500; complaint alleged violation of

the Act's Section 8(a)(1) and (3). Hearing at Philadelphia, 11-14 April 1983. Adm. Law Judge George Norman's decision issued 15 August 1983.

***

Ground Breakers, Inc. (6-CA-17898, 18001; 280 NLRB No. 14) Clarksburg, W. Va. 30 May. The Board affirmed an administrative law judge's decision that the employer unlawfully refused to give Mine Workers District 31 information it requested in order to process a grievance over the employer's failure to recall two employees to work.

In adopting the judge's conclusion, the Board noted it relied on United Technologies Corp., 274 NLRB No. 72 (1985), in which it set forth an employer's obligation to provide information relevant to a union's evaluation of employee grievances.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Mine Workers and Mine Workes District 31; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Clarksburg 19 April 1985. Adm. Law Judge James L. Rose's decision issued 31 July.

***

Times Wire & Cable Company (5-CA-12971, 13153, 5-RC-11315; 280 NLRB No. 3) Chatham, Va. 30 May. Rejecting an administrative law judge's recommendation of a bargaining order, Chairman Dotson and Member Johansen set aside a second election and directed a third one on the basis of the employer's illegal withholding of an expected wage increase and the employer's placing the onus on the Rubber Workers, conduct which ocurred during the critical period for the second election. Member Dennis, dissenting in part, would issue a bargaining order.

Among supporting evidence for the judge's recommendation of a bargaining order was the employer's pre-first election antiunion campaign, which included unlawful threats of plant closure. The panel majority noted, however, that the employer's misconduct did not dissipate the union's majority; rather, it said, the union won the first election (later set aside because of the union's objectionable conduct). It thus reversed the judge's finding that conduct occurring before the first election constituted interference with free choice in the second election, and held that a bargaining order was not warranted.

Member Dennis noted that the employees were subjected to serious "hallmark" violations permeating the entire 180-person bargaining unit. She also found that unlawful threats of closure were disseminated throughout the unit. Accordingly, she would issue a bargaining order.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by the Rubber Workers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Danville on dates in November and December 1981 and in February 1982. Adm. Law Judge Richard A. Scully's decision issued 30 June 1983.

***

Pittsburgh Testing Laboratory (23-CA-10263; 279 NLRB No. 173) Bay City, Tex. 30 May. The Board granted summary judgment and held the employer in violation of the Act for its refusal to bargain with Cement Masons Local 681, and to provide the union with information it requested concerning unit employees and their wages and benefits.

The Board found that all issues were or could have been raised in the underlying representation proceeding.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Cement Masons Local 681; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 6 March 1986.

***

Lemay Caring Center and Dasal Caring Centers, Inc.; Walton Caring Center (14-CA-17421; 280 NLRB No. 7) St. Louis, Mo. 30 May. Concurring with an administrative law judge's decision, the Board held that the successor employer to Walton Homes, Inc. unlawfully refused to hire its predecessor's employees because they were represented by a union, and refused to bargain with Service Employees Local 50, which had represented employees of Walton Homes, Inc.

The Board noted that credited testimony concerning Acting Administrator Charlotte Sczpanski's remarks to employees amply demonstrated that the employer refused to hire its predecessor's employees because of their union affiliation. The judge found that Sczpanski emphasized the importance of nonunion membership and support as a condition of employment by telling an applicant that although she had been hired, she (the employee) would have "to get a withdrawal card from the Union" as a condition of continued employment.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Service Employes Local 50; complaint alleged violation of the Act's Section 8(a)(1),(3), and (5). Adm. Law Judge Phil W. Saunders' decision issued 21 February 1985.

***

Parkview Gardens Care Center (18-CA-9125; 280 NLRB No. 5) Waterloo, Iowa. 30 May. The Board affirmed an administative law judge's decision that the employer unlawfully withdrew recognition from the Auto Workers and unilaterally changed

wages, benefits, and other conditions of employment.

The employer relied on a decertification petition in withdrawing recognition.

The judge found that the decertification petition was tainted by employer remarks which conditioned continued employment, or reemployment after a strike, on resignation from the union. He thus held that the employer was not justified in either withdrawing recognition from the union or unilaterally instituting a new employment program.

(Members Johansen, Babson and Stephens participated.)

Charges filed by the Auto Workers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing 25 June 1985. Adm. Law Judge Peter E. Donnelly's decision issued 6 February 1986.

***

Dorothy Shamrock Coal Company (25-CA-14734; 279 NLRB No. 174) Indianapolis, Ind. 30 May. Members Dennis and Johansen affirmed an administrative law judge's finding that the employer unlawfully ceased operating company trucks and laid off its drivers in retaliation for their union organizing activities. Chairman Dotson dissented on this finding.

The panel majority said: "Given the Respondent's avowed commitment to keep its operation nonunion and its oft-repeated plan to accomplish this goal, combined with the timing of the conversion on the heels of the union election and the Respondent's shifting reasons for the layoff, there is ample evidence to establish a prima facie showing that the Respondent's layoff of drivers and its conversion to owner-operators were unlawfully motivated." They concluded that the employer did not rebut the showing that the layoffs were unlawfully motivated.

Chairman Dotson would find that the facts fall short of a prima facie showing that the employer's decision to lay off its drivers was unlawfully motivated.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Jack Wilson, an Individual; complaint alleged violation of the Act's Section 8(a)(1), (3), and (4). Hearing at Indianapolis, 21-22 October 1982. Adm. Law Judge John H. West's decision issued 24 February 1983.

***

Armon Co. (4-CA-13773, et al.; 279 NLRB No. 158) Bensalem, Pa. 30 May. The Board adopted a bargaining order recommended by an administrative law judge against the employer for its continuing resolve to coerce and retaliate against employees for supporting the union.

The majority opinion by Members Dennis and Johansen distinguished this case from the Board's decision in PBA Inc., 270 NLRB 998, where it denied a bargaining order. In the PBA case, the employer threatened to close the facility if the employees struck and to fire an employee if he signed an authorization card, neither of which was carried out. In the instant case, however, the employer committed additional unfair labor practices after a strike and further card signing occurred.

Dissenting in part, Chairman Dotson said a bargaining order was inappropriate because the strike and additional card signing tend to show the employees were not intimidated. He also pointed out that the two discharged employees were reinstated with backpay, mitigating any lingering effects of the employer's misconduct.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 115; compliant alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Philadelphia, 7-8 December 1983. Adm. Law Judge Hutton S. Brandon's decision issued 24 October 1984.

***

Computer Sciences Corp. and E G & G Florida, Inc. (12-CA-7923, 10536; 280 NLRB No. 1) Kennedy Space Center, Fla. 30 May. The Board adopted an administrative law judge's finding that Computer Sciences Corp. was the successor employer of a unit of commercial programmers and analysts formerly employed by Federal Electric Corp.

The judge had rejected CSC's assertion that organizational changes it implemented upon being awarded a computer services contract in May 1977 erased commercial and scientific distinctions in the functional nature of the work performed by unit (commercial) and nonunit (scientific) employees. Therefore, he found that CSC violated the Act by refusing to bargain with the union.

The judge also found that EGG, which was awarded the computer services contract in 1983, in turn became CSC's sucessor and as such, also acted unlawfully in refusing to bargain with the union.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Theatrical Stage Employees Local 780; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Cocoa, 21 May and 23-24 July 1984. Adm. Law Judge Irving H. Socoloff's decision issued 28 June 1985.

***

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Electrical Workers (IBEW) Local 3 (Burroughs Corp.) Newark, N.J. 29 May 22-CB-5394; JD-(NY)-43-86, Howard Edelman, ALJ

Greenleaf Motor Express, Inc.; Ashtabula Chemical Corp. (Teamsters Local 377) Ashtabula, Ohio 22 May 8-CA-17792, 18146; JD-138-86, Thomas A. Ricci, ALJ

Lumbee Farms Cooperative (Industrial Union Department, AFL-CIO) Lumber Bridge, N.C. 27 May 11-CA-11773, 11841; JD-(ATL)-35-86, Hutton S. Brandon, ALJ

Sussex Properties (Hotel and Restaurant Employees Local 886) Birmingham, Ala. 27 May 10-CA-21425; JD-(ATL)-40-86, J. Pargen Robertson, ALJ

Steelworkers Local 406-U (Individual) Boyertown, Pa. 27 May 4-CB-5132, 5188; JD-130-96, Benjamin Schlesinger, ALJ

Teamsters Local 25 (Boston Deliveries, Inc.) Allston and Brighton, Mass. 28 May 1-CC-2094; JD-143-86, Marvin Roth, ALJ

Big East Conference (Collegiate Basketball Officials Assn.) Philadelphia, Pa. 29 May 4-CA-14754; JD-142-86, Robert A. Giannasi, ALJ

H. Treffinger Repair Services (Teamsters Local 776) Camp Hill, Pa. 30 May 4-CA-15394; JD-139-86, Marion C. Ladwig, ALJ

Missouri Portland Cement Co. (Boilermakers Local 438) Joppa, Ill. 30 May 14-CA-17812; JD-145-86, Richard L. Denison, ALJ

Owens-Corning Fiberglas Corp. (Insulation Local 1) Kansas City, Kans. 29 May 17-CA-12843; JD-140-86, Bernard Ries, ALJ

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2020

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

2 - 6 JUNE 1986 (W-2020)

NEWARK PUBLIC LIBRARY
JUN 27 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Armco, Inc., and the Steelworkers and its Local 1865	Ashland Ky.	9
Building & Construction Trades Council of Philadelpia and Vicinity	Lancaster, Pa.	1
California Cigarette Concessions, Inc.	Los Angeles, Calif.	6
Communication Workers	Washington, D.C. Baltimore, Md. Richmond, Va. Charleston, W. Va.	2
IBEW Local 211	Atlantic City, N.J.	9
Imperial House Condominium	Coral Gables, Fla.	5
Lee's Roofing and Insulation	West Sacramento, Calif.	8
Lincoln Welding Supply Co.	Waverly, Neb.	2
Longshoremen's Local 799	Boston, Mass.	3
Manhattan Eye, Ear and Throat Hospital	New York, N.Y.	7
Mitchell Manuals, Inc.	San Diego, Calif.	7
Operating Engineers Local 30 and 30A	Uniondale, N.Y.	5
Otterbacher Manufacturing, Inc.	Crestline, Ohio	1

LR1.15/2:

Rainbow Coaches	Honolulu, Hawaii	3
Revco D.S., Inc. (D.C.)	Edwardsville, Kans.	3
Sands Motel and AMM, Inc.	Detroit, Mich.	8
Sealectro Corp.	Watertown, Conn.	4
Volk & Huxley and Vulcan Typography Co.	New York, N.Y.	6
Westwood Industries, Inc.	Chehalis, Wash.	4

OTHER CONTENTS

List of Decisions of Administrative Law Judges 11

List of Decisions of Elections by Regional Directors 11

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Building & Construction Trades Council of Philadelphia & Vicinity (4-CC-1568, 1574; 279 NLRB No. 157) Lancaster, Pa. 30 May. Members Johansen and Babson approved a settlement in which the union agreed to cease secondary conduct it allegedly undertook to force Abington Memorial Hospital to cease business with Wohlsen Construction Company. Chairman Dotson would not approve the stipulation because it contains a nonadmission clause whereby the union does not admit it violated the Act.

Members Johansen and Babson noted they were troubled by the apparent ineffectiveness of past Board and court orders to deter unlawful secondary conduct by the union. However, they said, the remedy provided by the stipulation far outweighs any possible additional salutary benefits derived from the deletion of the nonadmissions clause from the stipulation.

The remedy provided for a broad cease-and-desist order, the publication of the Board notice in the local newspaper, the distribution of the Board notice to all local unions affiliated with the respondent, and entry of a court decree.

Chairman Dotson pointed out that the union "has been a frequent and serious violator of the Act for many years." In his opinion, for a Board order to have any chance of deterring future violations, the union must admit that it committed these violations or it must participate in a hearing before an administrative law judge.

(Chairman Dotson and Members Johansen and Babson participated.)

***

Otterbacher Manufacturing, Inc. (8-RC-13207; 279 NLRB No. 160) Crestline, Ohio 30 May. Members Babson and Stephens overruled an objection alleging that an atmosphere of fear which interfered with a free election was created by a third party assertion that the employer intended to discharge employees who supported the Steelworkers, should the union lose. Member Johansen concurred in the result.

The assertion of potential discharge occurred in a memo written by a labor relations consultant. The memo was posted on a bulletin board and then removed in one afternoon more than two weeks before the election.

The panel majority noted that within two days after the posting the employer denied any intent to discharge employees for seeking union representation, and explained to employees that the memo was retaliation by the consultant because the employer hired a law firm instead of the consultant. The panel held that since the employees had good reason to discount the contents of the memo, it could not be said that as atmosphere of fear and coercion existed.

Member Johansen would not name the consultant nor publish his memorandum as an appendix to this decision. He cited the lack of evidence the consultant was given an opportunity to confirm or deny authorship.

The Board certified the Steelworkers as employees' representative.

(Members Johansen, Babson and Stephens participated.)

***

Communications Workers (5-CB-4484; 280 NLRB No. 9) Washington, D.C., Baltimore Md., Richmond, Va. and Charleston, W.Va. 30 May. The Board affirmed an administrative law judge's decision that the union violated the Act by refusing to continue to agree to the preparation, use, and cost sharing of official transcripts of nonexpedited arbitration hearings conducted pursuant to the grievance arbitration provisions of its contract with Chesapeake and Potomac Telephone Company.

There was no express contract provision requiring the preparation, use and cost sharing of an official transcript. The General counsel contended, however, that the consistent past practice over the 30-year history of the contactual relationship made it a requirement of the contract.

The judge agreed. He said that since the practice was one the parties had mutually agreed upon, it could not be altered during the contract term except by mutual consent. The union's announced unilateral refusal to continue this practice threatened to nullify the grievance arbitration provisions of the agreement as the employer would not agree to the change in procedure, the judge noted. He thus held that the union's action violated the Act.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by The Chesapeake and Potomac Telephone Company; complaint alleged violation of the Act's Section 8(b)(3). Hearing at Washington, 16-17 April 1985 and at Birmingham, Ala. 14 May 1985. Adm. Law Judge Richard A. Scully's decision issued 29 October.

***

Lincoln Welding Supply Co. (17-CA-12664; 280 NLRB No. 19) Waverly, Neb. 30 May. The Board granted summary judgment and held the employer violated the Act by unilaterally changing terms and conditions of employment, failing to furnish Teamsters Local 554 with relevant information, and by bypassing the union and dealing directly with employees.

All issues raised were, or could have been, raised in the underlying representation proceeding , the Board found.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 554; compliant alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 30 September 1985.

***

Revco D.S., Inc. (D.C.) (17-CA-12837; 280 NLRB No. 22) Edwardsville, Kans. 30 May. Granting summary judgment, the Board held that the employer violated the Act by refusing to bargain with Teamsters Local 955, the certified collective-bargaining representative of warehouse and maintenance employees.

Summary judgment was granted on a finding that all issues raised were, or could have been, litigated in the underlying representation proceeding.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 955; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 18 February 1986.

***

Longshoremen's Local 799 (1-CD-744; 280 NLRB No. 24) Boston, Mass. 30 May. The Board awarded the hose hookup work associated with the loading and unloading of barges carrying bulk cement at Atlantic Cement Company, Inc.'s Boston terminal to the company's unrepresented employee, and not to workers represented by Local 799.

On changing its hookup method, the employer informed two ILA-repesented workers, who had been performing the hookup work, that it not longer had any hose hookup work for them to do. It then gave the new hookup work--which required only 3 or 4 minutes to complete--to its custodial employee, and Local 799 picketed over the matter.

The Board found that employer preference and economy and efficiency of operation favored award to the unrepresented employee. It noted that under the former method, the two longshoremen were paid for the entire time it took to complete a cement delivery, even though they did not work between their one-hour connection work and their one-hour disconnection work. The hookup work is incidental to the custodian's other duties, the Board said.

(Members Dennis, Johansen and Babson participated.)

***

Rainbow Coaches (37-CA-1341, et al.; 280 NLRB No. 17) Honolulu, Hawaii. 30 May The Board affirmed an adminstative law judge's decision ordering the employer to make whole 10 discriminatees in amounts ranging from $1,663.18 to $18,421,76. The employees were found to have been unlawfully discharged in a 1979 decision and order (241 NLRB 589).

The employer contended that some claimants willfully concealed interim earnings. It urged that all claims for backpay should be barred where claimants failed to keep reaonably accurate records of their job search. The judge, however, found no showing of willful deceit. He also noted that the poor recordkeeping was more the failure of Board pensonnel to clearly inform alleged

discriminatees of the necessity to maintain and retain records of their job search and interim earnings. This failure by the Board, he said, does not redound to the detriment of the claimants.

(Chairman Dotson and Members Johansen and Babson participated.)

Supplemental hearing at Honolulu on dates in May, June, July and August 1983. Adm. Law Judge Joan Wieder's decision issued 12 April 1984.

***

Sealectro Corp. (39-CA-1933, et al., 39-RC-480; 280 NLRB No. 15) Watertown, Conn. 30 May. The Board affirmed an administrative law judge's finding that the employer unlawfully discharged David Betancourt, warned and suspended James Famiglietti, and warned another employee--all because of their organizing efforts for the Machinists.

The judge rejected employer contentions that Betancourt was discharged for a poor attendance record, noting that Betancourt was treated in a disparate manner from other employees who had attendance records as bad or worse than Betancourt's. He also pointed to the precipitate nature of the discharge and the company's failure to follow its usual procedures, and he concluded that the discharge was in reprisal for union activities.

(Chairman Dotson and Members Dennis and Babson participated.)

Cahrges filed by the Machinists and Individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Hartford, on dates in August and November 1984. Adm. Law Judge George F. McInerny's decision issued 15 April 1985.

***

Westwood Industries, Inc. (19-CA-17945; 280 NLRB No. 12) Chehalis, Wash. 30 May. Granting summary judgment, the Board held that the employer violated the Act by withdrawing recognition from Teamsters Local 252 and by refusing to continue in full force and effect the terms of the existing collective-bargaining agreement.

Summary judgment was granted on employer failure to file an answer to the complaint.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 252; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 30 January 1986.

Operating Engineers Local 30 and 30A (29-CB-5776; 280 NLRB No. 18) Uniondale, N.Y. 30 May. The Board agreed with an administrative law judge that the union violated the Act by refusing to execute a contract which it had negotiated with Hyatt Management Corporation of New York, Inc. Contrary to the judge, however, the Board held that the parties should execute the contract only for the duration of the contract's terms.

The contract was supposed to commence as of 1 January 1984 and was to expire on 31 December 1986. The judge reasoned that because a substantial portion of the agreed term elapsed during the pendency of these proceedings, the contract's terms should be extended so that the contract would expire on a date three years from the date the union executes the contract.

The Board disagreed. It noted that while the Board has the authority to enforce the terms of a negotiated agreement, it cannot compel a party to agree to contractual provisions not contained in the negotiated agreement--which, the Board said, would be the case here if the Board adopted the judge's recommended remedy and order extending the terms of the parties' contract beyond its original expiration date.

(Chiarman Dotson and Members Johansen and Stephens participated.)

Charges filed by Hyatt Management Corporation of New York, Inc.; complaint alleged violation of the Act's Section 8(b)(3). Hearing at Brooklyn on 15 May and New York on 18 September 1985. Adm. Law Judge Harold B. Lawrence's decision issued 31 January.

***

Imperial House Condominium, Inc. (12-CA-9410; 279 NLRB No. 154) Coral Gables, Fla. 30 May. Members Dennis, Babson and Stephens held that the Board's established practice of asserting jurisdiction over residential condominiums is appropriate. Chairman Dotson and Member Johansen would decline to assert jurisdiction over condominiums on the ground of what they said was "the unique nature of condominiums."

The Board majority reaffirmed the Board's 1979 decision in 30 Sutton Place, 240 NLRB 752 (1979), extending the Board's jurisdictional reach to include residential condominiums and cooperatives. In that decision, the Board concluded that "cooperatives and condominiums are involved in commercial activity on a large scale" and that they "are engaged in business having a significant impact on interstate commerce."

Chairman Dotson and Member Johansen would overrule 30 Sutton Place and return to the Board's pre-1979 practice of declining to assert jurisdiction over residential condominiums. In their view, a condominium is not a "business enterprise" but a "creature of unit owners" serving only to allow individual home owners "to share collectively in meeting the expenses entailed in maintaining the upkeep and appearance of their property."

(Full Board participated.)

Charges filed by Hotel and Restaurant Employees Local 355; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Coral Gables, 11 June 1981. Adm. Law Judge Howard I. Grossman's decision issued 28 December 1981.

***

California Cigarette Concessions, Inc. and California Cigarette Concessions, in its capacity as debtor-in-possession (21-CA-23244; 280 NLRB No. 20) Los Angeles, Calif. 30 May. Granting summary judgment, the Board held that the employer violated the Act by refusing to make contributions to various union funds, by refusing to pay accumulated vacation pay to unit employees, and by failing to respond to grievances filed under its collective bargaining agreement with Teamsters Local 848.

The employer failed to file an answer to the complaint.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 848; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 21 March 1985.

***

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. (2-CA-18630, 18649; 280 NLRB No. 21) New York, N.Y. 30 May. The Board affirmed an administrative law judge's findings that Amateyus phased out its business at 228 East 45th Street, and then continued it under the name of Vulcan, at a new location in an adjacent building, after having induced Amateyus employes to go to work for Vulcan on a nonunion basis and under terms and conditions of employment different from those embodied in its contract with New York Typographical Union No. 6. These actions violated the Act, the judge held.

In 1981 Vulcan purchased all the assets of Volk and Huxley, Inc., which was bound to a collective bargaining agreement between the Printers' League Section of the Printing Industries of Metropolitan New York, Inc. and the union. The jduge found that Amateyus was a successor employer to Volk & Huxley; and that Amateyus, by virtue of its actions from the time it succeeded Volk and Huxley until it closed its 45th street operation, assumed the obligations of its predecessor's contract.

In finding that Vulcan and Amateyus were alter egos, the judge found that the changes the employer made were "only for the purposes of avoidance of the Union and the contract."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by New York Typographical Union No. 6; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at New York on

dates in November 1982 and in January and February 1983. Adm. Law Judge Julius Cohn's decision issued 27 June 1985.

***

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. (21-CA-23413; 280 NLRB No. 23) San Diego, Calif. 30 May. Contrary to an administrative law judge, Members Dennis and Babson found that the employer unlawfully discharged three employees for what they held was protected concerted activity in writing a letter of complaint to the chairman of the board of the employer's parent company. Chairman Dotson would not find that the letter writing was protected activity.

The panel majority found that an analysis of the letter revealed that it was directly related to concerns about employees' terms and conditions of employment. It noted that three paragraphs of the letter specifically addressed typical employee concerns such as wages, education and training. Members Dennis and Babson further concluded that the employer failed to demonstrate that the letter "used sufficiently opprobrious, defamatory, or malicious language to remove the employees from the protection of the Act."

Chairman Dotson would find that the letter "consisted of nothing more than meddling in the Respondent's organizational structure, and that any mention therein of wages and conditions of employment was part and parcel of that interference."

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by an Individual; complaint alleged violation of the Act's Section 8(a)(1). Hearing at San Diego 12-13 March 1985. Adm. Law Judge James S. Jenson's decision issued 19 August.

***

Manhattan Eye, Ear and Throat Hospital (2-CA-20501, et al.; 280 NLRB No. 11) New York,N.Y. 30 May 1986. Reversing an administrative law judge's decision, the Board found that the employer, through a supervisor, unlawfully solicited employees to resign from Hospital and Health Care Employees District 1199. Accordingly, the Board held, the employer did not have a good-faith doubt of the union's majority status and its withdrawal of recognition from the union violated the Act.

The Board found that remarks by supervisor Eufemia James went beyond mere providing employees with information on how to resign from the union and constituted unlawful solicitation of resignation from the union. It noted that James solicited resignations and conditioned return to work on resignation from the union. The Board held that James' conduct, aimed at causing disaffection from the union, tended to interfere with employees' free exercise of Act rights and was unlawful interference.

In view of this finding, the Board further held that the employer's claim of a good faith doubt of union majority status was not raised in a context fee of

unfair labor practices, and that the withdrawal of recognition and unilateral changes in working conditions violated the Act.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Hospital and Health Care Employees District 1199; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at New York, 4-8 March 1985. Adm. Law judge Harold B. Lawrence's decision issued 16 August.

***

Sands Motel and AMM, Inc. (7-CA-19375, 19558, 19559; 280 NLRB No. 13) Detroit, Mich. 30 May. THe Board affirmed an administrative law judge's decision that the joint employers unlawfully subcontracted unit work, without bargaining with the union, in order to retaliate against the chief union adherent and to erode employee support of Hotel and Restaurant Employees Local 24.

The judge noted that on March 13, 1981, following a successful union organizing effort, the employer terminated its laundry operation and laid off laundress Sharon Bysiorek, the principal employee advocate of union representation. He further found that the employer failed to show that Bysiorek would have been terminated and the laundry work subcontracted regardless of the existence of an inferred unlawful motivation. He thus concluded that the termination and subcontracting violated the Act.

The termination of another laundress, Alice McKenzie, was the necessary result of the discriminatory subcontracting, and therefore that discharge also violated the Act, the judge held.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Individual and Hotel and Restaurant Employees Local 24; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Detroit, 14-15 July 1982. Adm. Law Judge Thomas R. Wilks' decision issued 29 September 1982.

***

Lee's Roofing and Insulation (20-CA-17087; 280 NLRB No. 25) West Sacramento, Calif. 30 May. Members Dennis and Babson affirmed an administrative law judge's decision that the employer violated the Act by failing to file reports with, and by failing to make payments to, the trust funds provided for in the collective-bargaining agreement with Roofers Local 47. Chairman Dotson dissented.

The employer admitted the factual allegations of the complaint, but denied that its actions violated the Act. The judge, however, found that the employer's various affirmative defenses were without merit.

Chairman Dotson would find that the employer's failure to make fund contributions was in the nature of a contractual breach best left to resolution

by the parties in other forums. He would dismiss the complaint.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Roofers Local 47; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Sacramento, 2 August 1983. Adm. Law Judge Roger B. Holmes' decision issued 8 November 1983.

***

Electrical Workers (IBEW) Local 211 (Atlantic Div. of the Southern New Jersey Chapter, Inc., National Electrical Contractors Association) (4-CB-4309; 280 NLRB No. 10) Atlantic City, N.J. 30 May. The Board agreed with an administrative law judge's finding that the union unlawfully refused to allow Robert Campbell and James Walker an opportunity to take its journeyman wireman's examination, thus denying them the opportunity to improve their opportunities for employment from the union hiring hall. Reversing the judge on another allegation, the Board found that the union further violated the Act by refusing to refer Campbell and Walker for employment in the manner prescribed by its collective-bargaining agreement.

The judge found that since the applicants whom the union referred to work, like the discriminatees, were not members of any IBEW local, Campbell and Walker had been been discriminated against for reasons related to union membership. Accordingly, she held that the union had met its burden of showing that the referrals were not discriminatorily motivated.

Contrary to the judge, the Board held that a union cannot justify referrals which are contrary to its estalbished procedures simply by demonstrating that the conduct lacked a specific discriminatory motivation. Accordingly, it concluded that, even assuming the absence of a specific discriminatory intent, the union violated the Act in each instance that it made referrals which did not comport with its established hiring hall procedures.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by an Individual; complaint alleged violation of the Act's Section 8(b)(1)(A) and (2). Hearing at Philadelphia, on dates in March, April and June 1983. Adm. Law Judge Mary Ellen R. Benard's decision issued 23 March 1984.

***

Armco, Inc., Eastern Steel Division, Ashland Works and the Steelworkers and its Local 1865 (9-CA-5285, 9-CB-18227; 279 NLRB No. 143) Ashland, Ky. 30 May. The Board affirmed an administrative law judge's findings that the employer violated the Act by recognizing the Steelworkers as representative of employees at a coke plant it acquired,and by applying a collective-bargaining agreement containing a union-security clause provision to those employees. Members Dennis and Babson also agreed with the judge that the company unlawfully refused to bargain with the Oil, Chemical and Atomic Workers, which had represented coke

facility employees when its predecessor, Allied Chemical Corporation, owned the plant. Dissenting on this issue, Chairman Dotson would find that a question of representation existed and therefore the employer was required to refrain from recognizing either union until the representation question is resolved by a self-determination election.

The panel majority found that Armco was a successor employer, that the coke facility employees constituted an appropriate unit, and that OCAW did not waive its claim to represent employees or disclaim interest in the unit. In light of these findings, the panel majority concluded that Armco was legally bound to recognize and bargain with the incument union, OCAW. Contrary to the Chairman, Members Dennis and Babson further concluded, "even if Armco had been faced with competing claims for recognition, under any view of Board law a recognition demand made by an outside union representing another unit, unsupported by even the filing of a representation petition, would not alter Armco's obligation to recongize and bargain with the OCAW."

Chairman Dotson noted that for approximately 40 years the Steelworkers represented employes at a nearby steel works production facility operated by Armco; on acquisition of the coke plant, he said, the employer granted recognition to the Steelworkers as the coke plant employees' representative without attempting to determine those employees' desire for representation. He would find that the competing claims for representation by the Steelworkers and the OCAW raised a question that should be resolved through an election.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Individual and Oil, Chemical, and Atomic Workers; complaint alleged violation of the Act's Section 8(a)(1), (2), (3), (5), and 8(b)(1)(A) and (2). Hearing at Ashland, 9-12 and 16-17 August 1983. Adm. law Judge John H. West's decision issued 18 July 1984.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Kawasaki Motors Corporation, U.S.A. (Auto Workers), Lincoln, Nebraska. 4 June. 17-CA-8737; 8854; 8936 JD-151-86, Robert T. Wallace, Adm. Law Judge

H. Treffinger Repair Services, Inc. (Teamsters Local 776), Camp Hill, Pennsylvania. 30 May. 4--CA--15394; JD--139--86, Marion C. Ladwig, Adm. Law Judge

Missouri Portland Cement Company (Boilermakers Local 438), Joppa, Illinois. 30 May. 14--CA--17812; JD--145--86, Richard L. Denison, Adm. Law Judge

Great Lakes Oriental Products, Inc. (Production Workers Local 707), Chicago, Illinois. 5 June. 13--CA--25165; JD--146--86, Thomas D. Johnston, Adm. Law Judge

Mine Workers District 2, Local 2202 (Reitz Coal Co.) (An Individual), Ebensburg, Pa. 5 June. 6--CB--6958; JD--149--86, Thomas A. Ricci, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Brinks, Incorporated (9-RC-14768), Dayton, Ohio. 29 May. All employees performing guard duties, including guards, messengers, drivers and couriers, shall vote for representation by Plant Guard Workers, or for no representation.

Brinks, Incorporated (30-RC-4575), Milwaukee, Wisconsin. 4 June. All full-time and regular part-time persons classified as drivers, messengers and guards shall vote for representation by Plant Guard Workers, or for no representation.

Noel Foods, Inc. (19-RC-11398), Seattle, Washington. 28 May. All salespeople employed by Noel Foods, Inc., in western Washington, shall vote for representation by Teamsters Local 117, or for no representation.

Washington Human Development (19-RC-11390), Seattle Washington. 30 May. All full-time and regular part-time employees performing office clerical, record keeping, teaching, counseling, recruiting, and job development duties shall vote for representation by Teamsters Local 763, or for no representation.

Allgair Mechanical Air Conditioning, Inc. (12-RD-587), Miami, Florida. 29 May. All journeymen, apprentices and pretrainees employed by the Employer at its Miami, Florida facility who are engaged in all work included in the work and territorial jurisdiction of Allgair Mechanical Air Conditioning, Inc., shall vote for representation by Plumbers Local 725, or for no representation.

Mississippi Power & Light Company (15-RC-7258), Jackson, Mississippi. 2 June. Senior instrument man, instrument man, head rodman, and rodman-chainman shall vote for representation by Electrical Workers (IBEW) Local 605, or for no representation.

Monson Trucking, Inc. (18-RC-13950), Duluth and Red Wing, Minnesota. 4 June. All full-time and regular part-time drivers shall vote for representation by Teamsters Local Nos. 346 and 160, jointly, or for no representation.

Gold Kist, Inc. (15-RC-7261), Graceville, Florida. 3 June. All production and maintenance employees including seasonal employees shall vote for represention by Teamsters Local 991, or for no representation.

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2021

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

9 - 13 JUNE 1986 (W-2021)

NEWARK PUBLIC LIBRARY
JUL 8 1986
U. S. GOVT. PUBS.
DEPOSITORY 378

CASES SUMMARIZED

Burroughs Interstate Services Credit Union	Plymouth, Mich.	4
Club Monte Carlo Corporation	Utica, Mich.	1
Consolidated Edison Co. Inc.	Westchester, N.Y.	5
Crandon Health Care Center, Inc.	Crandon, Wis.	2
Electrical Workers (IBEW) Local 3	Long Island, N.Y.	1
Mesa Vista Hospital	San Diego, Calif.	4
Mission Foods Corporation	San Diego, Calif.	2
Mode O'Day Company, Div. of Wickes Companies, Inc.	Burbank, Calif.	3
Springs Motel	Lexington, Ky.	3
(The) Well-Bred Loaf, Inc.	New York, N.Y.	5
Yaohan of California, Inc.	Fresno, Calif.	4

LR 1.15/2:

READEX FICHE best copy available

OTHER CONTENTS

List of Decisions of Administrative Law Judges 7

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Club Monte Carlo Corporation (7-CA-22461, et al.; 280 NLRB No. 30) Utica, Mich. 6 June. The Board affirmed an administrative law judge's findings that the employer unlawfully suspended five employees and subsequently discharged one of them for inquiring about a tip for waitressing at a wedding reception.

The employer claimed that the tip inquiry was unprotected activity. The judge pointed out that the critical questions were whether the matter raised is of common interest and concern to the employees and whether it was raised for the mutual aid and protection of all the waitresses. He found that the waitresses were mutually seeking to secure for themselves what they perceived as full compensation for their services connected with their employment with the employer. Therefore, he concluded, the waitresses were engaged in a protected activity when they confronted the employer about a tip.

The judge further found that no discipline would have been imposed absent the waitresses' concerted protected activity.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Individuals; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Detroit, 23-24 February 1984. Adm. Law Judge Norman Zankel's decision issued 18 April 1984.

***

Electrical Workers (IBEW) Local 3 (29-CB-5394; 280 NLRB No. 31) Long Island City, N.Y. 6 June. Finding that the issues were moot, the Board dismissed allegations that the union unlawfully insisted on tape recording negotiating sessions with Telecom Plus of Downstate New York, Inc.

An administative law judge held that it would not effectuate the policies of the Act to rule on the merits of the complaint since the company has ceased operations, all employees have been terminated, and it is improbable that the status quo will ever be restored.

The Board thus dismissed the complaint, without prejudice to the charging party to commence additional proceedings by filing a new charge, if subsequent developments demonstrate that the charging party has resumed its operations and that the union has resumed its representative status.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Telecom Plus of Downstate New York, Inc.; complaint alleged violation of the Act's Section 8(b)(3). Hearing at New York, 19-20 March 1984. Adm. Law Judge James F. Morton's decision issued 22 February 1985.

***

Crandon Health Care Center, Inc. (30-CA-8561(E); 280 NLRB No. 28) Milwaukee and Crandon, Wis. 9 June. The Board affirmed an administrative law judge's decision awarding the employer $10,508.35 in attorney's fees and expenses, incurred during the employer's defense in an unfair labor practice proceeding. However, it denied an award of fees incurred by the employer in processing its supplemental application under the Equal Access to Justice Act.

The applicant's original application was denied by the Board on 8 July 1985 because the Equal Access to Justice Act had expired on 30 September 1984. EAJA was reenacted retroactively by Congress on 5 August 1985 and the employer filed a supplemental application on 15 August.

In denying expenses incurred during processing of the supplemental application, the Board noted that the applicant raised the issue of those fees for the first time in its exceptions to the judge's supplemental decision. Thus, the Board said, the employer attempted to raise a matter that it failed to raise before the judge--which, the Board held, was tantamount to raising issues for the first time on appeal that were not raised or litigated in the underlying proceedings. It accordingly held that the request for additional sums was not timely raised.

(Chairamn Dotson and Members Johansen and Stephens participated.)

Adm. Law Judge Thomas A. Ricci's supplemental decision issued 10 December 1985.

***

Mission Foods Corporation (21-RC-17572; 280 NLRB No. 26) San Diego, Calif. 6 June. Contrary to an Acting Regional Director, the Board found that "jobbers," who sell the employer's food products, are employees and not independent contractors.

The Board agreed with Teamsters Local 683, which had filed an election petition, that while the Jobbers Agreement on its face is indicative of an independent contractor arrangement between the employer and the individual jobber, the record established that the employer retained the right of control over the manner and means by which the jobbers perform their jobs. It further found that the jobbers' arrangement with the employer lacked any of the basic entrepreneurial or proprietary characteristics found in true independent contractor relationships.

Therefore, as the Board concluded that the jobbers are employees, it also found that the petitioned-for unit was appropriate. It reinstated the election petition which had been dismissed by the Acting Regional Director and remanded the proceeding for further action.

(Chairman Dotson and Members Dennis and Babson participated.)

***

Mode O'Day Company, Div. of Wickes Companies, Inc. (31-CA-15199; 280 NLRB No. 29) Burbank, Calif. 10 June. The Board agreed with an administrative law judge that the employer violated the Act by requiring Joanne Suffredini to sign a dues checkoff authorization card on her first day of employment, and by deducting money for union initiation fees from her wages pursuant to such authorization.

The employer's collective-bargaining agreement with Teamsters Local 598 required new employees to become members of the union within 31 days after commencing their employment.

The judge noted that the employer gave Suffredini an authorization form which had already been filled in, along with other forms she was required to sign. Under the circumstances, he said, it was reasonable for her to assume that she was required to sign the authorization card and since it was predated for that day, that she was was required to sign it then. The judge thus concluded that her execution of the authorization form was not voluntary.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Individual; complaint alleged violation of the Act's Section 8(a)(1),(2), and (3). Hearing at Los Angeles, 20 November 1985. Adm. Law Judge Earldean V.S. Robbins' decision issued 12 February 1986.

***

Springs Motel (9-CA-20549; 280 NLRB No. 33) Lexington, Ky. 10 June. The Board affirmed an administrative law judge's findings that the employer unlawfully threatened employees with discharge and other reprisals if they engaged in activities for Service Employees Local 557.

Chairman Dotson, dissenting in part, would reverse the judge's further findings that the employer violated the Act by interrogating employees on three occasions following company-sponsored meetings with a labor consultant and by creating an impression of surveillance of employees' activities. Regarding the alleged interrogations, he would find that a supervisor's asking "how did it go?" in reference to the meetings was not coercive.

Members Dennis and Babson concluded that the "systematic interrogation" of two employees following company-sponsored campaign meetings was unlawful. They further found that employees would reasonably assume from a supervisor's specific estimation of card signings in several departments that their union activities had been placed under surveillance.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Service Employees Local 557; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Lexington, 2-3 May 1984. Adm. Law judge Robert W. Leiner's decision issued 6 July 1984.

***

Yaohan of California, Inc. (32-CA-5763; 280 NLRB No. 32) Fresno, Calif. 10 June. Contrary to an administative law judge, the Board held that the employer discharged Tony Zamora, in violation of the Act,because of his activities for Food and Commercial Workers Local 1288.

The Board noted that the record was replete with evidence of union animus made plain to employees both before and after the onset of the union's organizing campaign. Additionally, it said, Zamora was discharged abruptly prior to the end of his workweek, just one day following his solicitation for the union, and his discharge was contrary to the company's policy of giving a warning prior to discharging an employee. The Board further found that the reasons asserted for the discharge did not withstand scrutiny.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Food and Commercial Workers Local 1288; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Fresno, 23-27 April and 14 June 1984. Adm. Law Judge Russell L. Stevens' decision issued 16 August 1984.

***

Burroughs Interstate Services Credit Union (7-CA-23441; 21269; 280 NLRB No. 34) Plymouth, Mich. 10 June. Concurring with an administrative law judge, the Board found that the employer unlawfully refused to bargain with Office and Professional Employees Local 42.

The judge found that the employer never complied with the Board's order in a 1983 unfair labor practice proceeding (7-CA-21269) in which it was found that the company unlawfully refused to honor its collective-bargaining agreement. Moreover, he further concluded, the employer further compounded its unfair labor practices by continuing and duplicating the unfair labor practices found in the previous case.

The employer's refusal to bargain, the judge held, included unilaterally eliminating clost of living adjustments for bargaining unit employees.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Office and Professional Employees Local 42; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Detroit, 24 January 1985. Adm. Law Judge Bruce C. Nasdor's decision issued 26 Nov.

***

Mesa Vista Hospital (21-CA-20284, 20358; 280 NLRB No. 27) San Diego, Calif. 11 June. The Board found, as did an administrative law judge, that the hospital which provides acute psychiatric care violated the Act by maintaining and enforcing a rule prohibiting the wearing of union insignia, while employees are at work, outside immediate patient care and other specifically identified areas where the wearing of union insignia would adversely affect patient care.

The rule prohibited the wearing of insignia in all areas of the hospital except employee lounges, parking areas, and the cafeteria during scheduled employee meal hours and when no patients are present. In view of this broad restriction with respect to location, the Board said, the employer must demonstrate an adverse impact on patient care in those areas where the ban applied. The Board found, however, that the employer did not demonstrate that the wearing of insignia would have an adverse impact on patient care in those areas.

The Board further noted that the employer's rule prohibited the wearing of insignia "during working time." It held that the rule's restriction in terms of time was also unlawfully broad.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Office and Professional Employees Local 30; complaint alleged violation of the Act's Section 8(a)(1). Hearing at San Diego, 6 May 1982. Adm. Law Judge David G. Heilbrun's decision issued 16 Sepember 1982.

***

The Well-Bred Loaf, Inc. (2-CA-17508, et al.; 280 NLRB No. 36) New York, N.Y. 11 June. The Board held, as did an administrative law judge, that a bargaining order was necessary to remedy the employer's unfair labor practices and to protect employee sentiment, expressed when a majority of employees signed authorization cards for Bakery Workers Local 4.

The Board found that the employer's unfair labor practices were serious and pervasive. It noted that soon after organizational activity began, the company interrogated employees; warned that it would discharge union adherents; and then discharged four employees, including the two union leaders. Subsequently, the employer again questioned employees about their union activity and discharged two other employees. The Board concluded that the theat of discharge and the acutal discharge of six employees from a unit of 23 employees were violations that were highly coercive and resistant to traditional remedies, and that a bargaining order was therefore warranted.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Bakery Workers Local 3; complaint alleged violation of the Act's Section 8(a)(1), (3), and (4). Hearing at New York on various dates from 13 April to 18 June 1981. Adm. Law Judge Stanley N. Ohlbaum's decision issued 4 June 1982.

***

Consolidated Edison Co. of New York, Inc. (2-CA-20343; 280 NLRB No. 39) Westchester, N.Y. 11 June. Chairman Dotson and Member Stephens agreed with an administrative law judge that the employer did not violate the Act by questioning Michael McGarry about his dissident union activities and by telling him not to solicit "on company time." Dissenting on these findings, Members Dennis would find that the employer's actions were unlawful.

The panel majority said that the known union activist solicited his fellow employees to sign union material while they were on work (as opposed to break) time. The employer has a right, it noted, to investigate apparent interference with its employees carrying out their duties. Thus, the panel majority found, the questioning of McGarry about his solicitations did not violate the Act.

For similar reasons, an admonition to McGarry not to interfere with employees on company time was not unlawful, Chairman Dotson and Member Stephens held.

Member Dennis noted that McGarry was soliciting on his own time, and, with only one exception, was soliciting employees who were also on their own time. She would find his activities protected. As for the incidents of alleged interrogation, she would find that the interrogations occurred in the context of several other unfair labor practices involving solicitation activities and McGarry. She would find the interrogations violated the Act.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Individual; compliant alleged violation of the Act's section 8(a)(1) and (3). Hearing at New York, 1-3 October 1984. Adm. Law Judge Joel P.Biblowitz' decision issued 7 March 1985.

***

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Bryson Environmental Services, Inc. (Steelworkers), Dolomite, Alabama. June 11. 10 CA-21464; JD(ATL)--44--86, Howard I. Grossman, Adm. Law Judge

Custodis-Cottrell, Inc. (Individual), Juliette, Ga. 10 June. 10-CA-21199; JD(ATL)--42--86, Hutton S. Brandon, Adm. Law Judge

Dubovsky and Sons, Inc. (Individual), Brooklyn, N.Y. 12 June. 29-CA-12033; JD(NY)--47--86, Harold B. Lawrence, Adm. Law Judge

Heck's, Inc. (Individual), Madison, Ind. 10 June. 25-CA-17635; JD-159-86, Michael O. Miller, Adm. Law Judge

Koenig Iron Works, Inc. (Iron Workers Local 455), New York, N.Y. 12 June. 29-CA-11793, et al.; JD(NY)--46--86, Harold B. Lawrence, Adm. Law Judge

Lacks Industries, Inc. (Furniture Workers), Grand Rapids, Mich. 9 June. GR-7-CA-24638; JD--150--86, Bruce C. Nasdor, Adm. Law Judge

Longshoremen's Local 1426 (Individual), Wilmington, N.C. 10 June. 11-CB-1407; JD(ATL)--41--86, William N. Cates, Adm. Law Judge

Middle Earth Graphics, Inc. (Individuals and Paperworkers), Kalamazoo, Mich. 6 June. GR-7-CA-24013(1), et al.; JD--154--86, Walter H. Maloney, Jr., Adm. Law Judge

Signal Communications, Inc. and Signal Equipment, Inc. (IBEW Local 46), Seattle, Wa. May 21. 19--CA--17905; JD(SF)--056--86, Jerrold H. Shapiro, Adm. Law Judge

SKW Alloys, Inc. (Autoworkers) Calvert City, Ky. 6 June. 9-CA-21789, et al.; JD--147--86, Martin J. Linsky, Adm. Law Judge

Teamsters Local 957 (Individual), Dayton Ohio. 11 June. 9--CB--5985, et al.; JD--144--86, Robert G. Romano, Adm. Law Judge

Valley Presbyterian Hospital (Service Employees Local 535), Van Nuys, Ca. 30 May. 31--CA--15434; JD(SF)--057--86, Michael D. Stevenson, Adm. Law Judge

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2022

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

16 - 20 JUNE 1986 (W-2022)

NEWARK PUBLIC LIBRARY
JUL 1 1 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

American Laser Corp.	Salt Lake City, Utah	6
Cafe La Salle, et al.	Sacramento, Calif.	4
Carter-Glogau Laboratories, Inc.	Glendale, Ariz.	7
Cherokee Heating and Air Conditioning Co.	Chamblee, Ga.	2
FGI Fibers, Inc.	Amsterdam, N.Y.	5
Hazex Construction Co.	Providence, Ky.	8
Heck's Inc.	Sprague, W. Va.	6
Jewish Hospital Center	Riverdale, N.J.	1
Kokomo Tube Co.	Peru, Ind.	3
M & M Supermarkets, Inc.	Savannah, Ga.	1
Mississippi Chemical Corp.	Yazoo City, Miss.	7
Newton Corporation	Lexington, Ky.	1
Products Unlimited Corp.	Sterling, Ill.	5
Public Service Electric and Gas Co.	Newark, N.J.	2
Reliable Tile Co., Inc.	Sacramento, Calif.	4
Terraillon Corporation	Central Islip, N.Y.	2

LR 1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 9

List of Directions of Elections by Regional Directors 9

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents U.S. Government Printing Office
Washington D.C. 20402

Jewish Hospital & Rehabilitation Center of N.J. (22-CA-14244; 280 NLRB No. 42) Riverdale, N.J. 16 June. Granting summary judgment, the Board held unlawful the employer's refusal to bargain with Hospital and Health Care Employees District 1199J and to provide the union with requested information concerning unit employees and their terms and conditions of employment.

The Board found that all issues raised were or could have been litigated in the underlying representation proceeding.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Hospital and Health Care Employees District 1199J; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 24 March 1986.

***

M & M Supermarkets, Inc. (10-CA-21501; 280 NLRB No. 40) Savannah, Ga. 16 June. The Board found that the employer unlawfully refused to bargain with Teamsters Local 728, the certified collective-bargaining representative of truck drivers and shop and forklift maintenance mechanics, including tractor-trailer drivers and straight drivers.

The Act violation was found on a motion for summary judgment.

(Members Dennis, Johansen and Babson participated.)

Charges field by Teamsters Local 728; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 12 March 1986.

***

Newtown Corporation (9-CA-21115; 280 NLRB No. 38) Lexington, Ky. 16 June. The Board granted summary judgment and held that the employer violated the Act by refusing to execute a written contract embodying an agreement reached with Teamsters Local 651.

The Board noted that the employer did not dispute that it made a contract offer to the union on 13 July 1984 and that on 17 July the union conveyed acceptance by informing the company the contract had been ratified. It also said that the employer's argument that the union's constitution and bylaws prohibit it from executing an agreement absent a majority vote is incorrect as a matter of law, in view of Board holdings that internal union matters cannot affect validity of collective-bargaining agreements.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Teamsters Local 651; complaint alleged violation of the Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 31 October 1984.

Terraillon Corp. (29-CA-10339, et al., 29-RC-5873, 29-RM-686; 280 NLRB No. 37) Central Islip, N.Y. 18 June. The Board affirmed an adminitrative law judge's decision that the employer violated the Act by cancelling Roberta Mittler's vacation and then discharging Mittler because she signed an authorization card for Electrical Workers (IBEW) Local 1922; and by reducing the work hours of another employee for discriminatory reasons.

The judge found that the employer revoked its approval of Mittler's previously authorized vacation because of her union activities. He further held that, since the denial of her vacation was discriminatorily motivated, the decision to discharge Mittler for going ahead with her vacation was equally violative of the Act.

The Board certified the union as representative of a unit of warehouse employees. It also overruled challenges to ballots cast by three office clerical unit employees and remanded the representation proceeding to the Regional Director to open and count the three ballots and to issue a revised tally of ballots and the appropriate certification.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Electrical Workers (IBEW) Local 1922; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing on various days in March and April 1984. Adm. Law Judge Raymond P. Green's decision issued 12 September 1984.

***

Cherokee Heating and Air Conditioning Co. (10-CA-21072; 278 NLRB No. 44) Chamblee, Ga. 18 June. The Board affirmed an administrative law judge's decision that the employer unlawfully discharged Cody Ann Moran for engaging in protected concerted activity.

The judge found that Moran was engaged in protected concerted activity during her various efforts to bring about a change regarding sales commission payments. He further found that the employer's decision to close down its service sales department, where Moran was employed, was a response to the protected concerted activity of the service sales department employees. He thus held that the discharge of Moran on closure of that department violated the Act.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Individual; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Atlanta, 3-4 October 1985. Adm. Law Judge Hutton S. Brandon's decision issued 21 November .

***

Public Service Electric and Gas Company (22-CA-13172; 280 NLRB No. 48) Newark, N.J. 18 June. The Board agreed with an administrative law judge that the employer during 1984 negotiations unlawfully insisted, as a condition of reaching a new agreement, on provisions which would abrogate a section of its 1982-1984

collective bargaining agreement with the Utility Co-Workers Association.

Since 1949, all the contracts between the union and the company contained an article providing that the terms of a new agreement would be retroactive to the date of expiration of the previous agreement.

The judge found that during 1984 negotiations, the employer conditioned its agreement to any new contract on the union's "consent" to abrogate the retroactivity clause. He concluded that "the company's position was tantamount to making any new collective bargaining agreement hostage to the company's insistence on abrogating an existing contractual committment." The judge thus held the employer in violation of the Act.

(Members Johansen, Babson and Stephens participated.)

Charges filed by the Utility Workers Association; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Newark, 11 September 1984. Adm. Law Judge Raymond P. Green's decision issued 19 Nov. 1984.

***

Kokomo Tube Company (25-CA-16543, 25-RC-8036; 280 NLRB No. 35) Peru, Ind. 18 June. The Board agreed with an administrative law judge's findings that the employer violated the Act by announcing and granting a wage increase in order to dissuade employees from supporting the Steelworkers, and by interrogating and theatening employees with plant closure. Contrary to the judge, Chairman Dotson and Member Dennis did not find that the unfair labor practices interfered with a 22 June 1984 representation election; Member Johansen would set aside the election and direct a new one.

Chairman Dotson and Member Dennis found that the wage increase and an incident of unlawful interrogation and threat of plant closure did not occur during the critical preelection period. They further noted that a supervisor's remark to an employee-- "I guarantee Kokomo will shut down if the Union comes in"--occurred more than a month before the election. The panel majority therefore found no basis for setting aside the election, and it certified that the union did not receive a majority of the valid ballots cast.

Member Johansen, dissenting in part, would set aside the election based on the supervisor's postpetition remark that he could "guarantee" that the company would close the plant if the union won the election. In his opinion, the remark constituted a serious threat.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by the Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Peru, 27 November 1984. Adm. Law Judge Harold Bernard, Jr.'s decision issued 27 June 1985.

***

Reliable Tile Co., Inc. (20-CA-16909(E); 280 NLRB No. 45) Sacramento, Calif. 18 June. Chairman Dotson and Member Dennis agreed with an administrative law judge that the employer was entitled to an award of attorney's fees and expenses incurred during the employer's defense in an unfair labor proceeding. Dissenting, Member Johansen would find that the General Counsel was substantially justified in proceeding against the employer, and he would deny the award.

The complaint in the unfair labor practice proceeding alleged that the employer unlawfully refused to abide by a collective-bargaining agreement with Bricklayers Local 19. The judge found in this supplemental proceeding that substantial justification for the General Counsel's litigating against the employer did not exist. He noted the only evidence presented to support the complaint against Reliable was a letter the union had sent that employer.

Member Johansen would find that, based on evidence the General Counsel had at the time and the inferences that could be drawn from the evidence, the General Counsel had grounds for a legal argument and that it was reasonable for the General Counsel to proceed with that argument.

The panel majority awarded the employer $8915.01 for fees and expense involved in defending in the underlying unfair labor practice proceeding and $3498.37 for fees and expenses incurred in connection with the EAJA proceedings.

(Chairman Dotson and Members Dennis and Johansen participated.)

Adm. Law Judge Russell L. Stevens' supplemental decision issued 7 August 1984.

***

Cafe La Salle; Personal Financial Management Services; Old Sacramento Investors, Ltd. (20-CA-192327, et al., 20-RM-2548; 280 NLRB No. 43) Sacramento, Calif. 18 June. The Board affirmed an administrative law judge's decision that Cafe La Salle violated the Act by granting employees benefits to dissuade them for seeking union representation and by refusing to write a letter of recommendation for Donna Palmer because the union filed an unfair labor practice charge alleging that Cafe La Salle laid off Palmer for discriminatory reasons.

Contrary to the judge, the Board found that the employer unlawfully questioned four employees about their reasons for joining the union.

Cafe La Salle, Old Sacramento, and Personal Financial Management Services were not joint employers of employees, the judge found. He dismissed allegations of wrongdoing against PFMS and Old Sacramento.

The Board directed the Regional Director to open and count two ballots to which challenges were overruled. If a revised tally shows that Hotel and Restaurant Employees Local 49 did not receive a majority of the valid ballots cast, then the 31 October 1984 election will be set aside and a second election held.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 49; complaint alleged violation of the act's Section 8(a)(1), (3) and (4). Hearing at Sacramento, 2-3 May 1985. Adm. Law Judge Roger B. Holmes' decision issued 25 October.

***

FGI Fibers, Inc. (3-RC-8542; 280 NLRB No. 54) Amsterdam, N.Y. 20 June. Members Dennis and Stephens upheld an objection alleging that the employer interfered with an election by explaining to employees that the company's no-solicitation rule would bar talk about union matters "in work areas or on work time." Chairman Dotson would find that the employer's admonishing employees not to disrupt coworkers is "more reflective of the Employer's legitimate desire to maintain production than that of antiunion motivation where, as here, this is the sole conduct found objectionable."

The Board panel majority found that the rule as explained would, as a practical matter, bar union discussions when employees were returning from breaks, and even in the absence of any particular showing of interference with production or discipline. Prior to the organizing campaign, it further noted, the employer had imposed no ban on employees' talking at their work stations. The panel majority thus found that the ban was overly broad and discriminatory. It set aside the 5-6 April 1984 election and directed a new one.

Chairman Dotson would find that the employer, by its statement, did not promulgate a no-talking rule but merely clarified a written no-solicitation rule in existence prior to the union organizing campaign. He would find no objectionable conduct and would certify the election results.

(Chairman Dotson and Members Dennis and Stephens participated.)

***

Products Unlimited Corp. (22-CA-7315, 33-RC-3050; 280 NLRB No. 41) Sterling, Ill. 19 June. The Board affirmed an administrative law judge's decision that the employer unlawfully discharged Edna Garcia and refused to promote Linda Smith because of their active support for the Steelworkers.

In addition to taking the unlawful actions against Smith and Garcia, the employer during the critical preelection period refused to permit the display of prounion posters while permitting the display of antiunion posters in the plant, and unlawfully interrogated employees about supporting the union and about how they were going to vote, the judge found. By these actions, he held, the employer interfered with the election. The election accordingly was set aside.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by the Steelworkers; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Rock Falls, 13-15 November 1985. Adm. Law Judge Marion C. Ladwig's decision issued 7 March 1986.

American Laser Corporation (27-RC-6405; 280 NRLB No. 67) Salt Lake City, Utah. 20 June. Members Dennis and Babson found that the employer engaged in objectionable preelection conduct by conducting interviews which constituted solicitations of employee grievances. Dissenting, Chairman Dotson would not find that the inquiry by a supervisor during employee evaluations as to what complaints or suggestions employees might have for the company was a promise of benefit which constituted grounds for overturning the election.

Personnel manager Joyce Wickham used the same agenda in conducting individual interviews with approximately 70 employees, discussing wages, complaints. and suggestions. Wickham testified that after she asked the employee what his salary was, she then asked if the employees had any complaints or suggestions.

The panel majority found that Wickham's conduct did not dispel employees' belief that corrective action on their grievances would be forthcoming. At no time, it pointed out, did Wickham announce that she oculd not make any promises or commitments concernign the grievances. Members Dennis and Babson thus held that the employer engaged in objectionable conduct, and they set aside the 1 September 1983 election and directed a second one.

Chairman Dotson noted that the interviews were held for the purpose of employee evaluation, and not for the purpose of discussing the union. He also found that Wickham made no promise of correction action, and none was taken. He would overrule the objection and reach the merits of the other election objections.

(Chairman Dotson and Members Dennis and Babson participated.)

***

Heck's Inc. (9-CA-21750, et al.; 280 NLRB No. 55) Sprague, W. Va. 20 June. The Board agreed with an administrative law judge that the employer unlawfully transferred Belinda Walton from stocker to cashier and then discharged her. Another employee, Kenneth Ward, was also unlawfully discharged because of his activities for Food and Commercial Workers Local 347, it was held

Walton's discharge, the Board found, was motivated by Walton's union and Board-related activities. It noted that Walton played a leadership role in the Union's organizational campaign; that the discharge was closely related in time to Walton's union activities and her giving testimony before the Board; and that the company evidenced clear animus against Walton by unlawfully transferring her to a job as cashier. The Board further found that the employer failed to show that it would have discharged Walton absent her union and Board-related activities.

(Chairman Dotson and members Dennis and Babson participated.)

Charges filed by Food and Commercial Workers Local 347; complaint alleged violation of the Act's Section 8(a)(1)(3), and (4). Hearing at Beckley, 7 August1985. Adm. Law Judge James L. Rose's decision issued 30 September.

***

Carter-Glogau Laboratories, Inc. (28-CA-7280; 280 NLRB No. 49) Glendale, Ariz. 19 June. Chairman Dotson and Member Babson agreed with an administrative law judge that the complaint allegations regarding the employer's failure to reinstate former economic strikers on their unconditional offer to return to work were barred by the six-month limitation on the filing of charges. Member Dennis dissented.

Laborers Local 383 filed charges on 7 January 1983. The panel majority found that if a November 1981 letter to the union was not unequivocal regarding the company's recall policy, then an April 1982 letter to the union made clear the employer's intention to put on the preferential hire list only those employees who supplied the company with their phone number and addresses. It thus held that the April letter put the union on sufficient notice to file a charge.

Members Dennis would find that neither the November nor the April letter gave the union clear and unequivocal notice that the employer was disregarding the union's mass unconditional offer of reinstatement and would reinstate only those former strikers who applied individually. She would consider the merits of the allegation.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Laborers Local 383; complaint alleged violation of the Act's Section 8(a)(1) and (3). Adm. Law Judge Gerald A. Wacknov's decision issued 27 December 1984.

***

Mississippi Chemical Corporation (15-CA-9719; 280 NLRB No. 46) Yazoo City, Miss. 18 June. The Board affirmed an administrative law judge's decision that the employer unlawfully discharged Dennis Fowler because of his activities for the Industrial Union Department, AFL-CIO.

The judge noted Fowler's involvement in union activity; the employer's knowledge of that involvement; the company's animus as reflected in interrogations, threats, and other actions found unlawful by the judge; the timing of the discharge not long after the advent of his union activities; and the fact that Fowlet was discharged for an offense tolerated by the company in other employees. The judge thus found that the General Counsel established a prima facie case of violation, which the employer failed to rebut.

(Members Johnsen, Babson and Stephens participated.)

Charges filed by Individual and the Industrial Union Department; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Yazoo City, 10-11 October 1985. Adm. Law Judge Hutton S. Brandon's decision issued 16 December.

***

Carpenters Local 2310 (Hazex Construction Co.) (9-CB-6321; 280 NLRB No. 47) Providence, Ky. 18 June. The Board affirmed an administrative law judge's decision that the union unlawfully caused Hazex Construction Company to lay off Arthur Miller because he was not a member of the union.

The judge found that Donald Towery, an agent of the union, threatened to picket and in fact did so in order to force the company to hire one of the union's members. Towery knew at the time that there was no job opening available for an additional carpenter and was told that if the union member was hired, Miller would have to be laid off. Towery, nevertheless, insisted that Jackson be hired under threat of picketing. Under the circumstances, the judge said, the company had no choice but to hire Jackson and lay off Miller.

The judge thus held the union in violation of the Act.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Arthur B. Miller, an Individual; complaint alelged violation of the Act's Section 8(b)(2). Hearing at Madisonville, 18 December 1985. Adm. Law Judge William F. Jacobs' decision issued 18 March 1986.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Aluminum Welding & Machine Works, Inc. (Individual), Portage, Ind. 17 June. 25--CA--17624; JD--163--86, David L. Evans, Adm. Law Judge

Teamsters Local 170 (Consolidated Beverages, Inc.) (Individual), Auburn, Mass. 16 June. 1--CB--6320; 1--CC--2103; JD--148--86, Marvin Roth, Adm. Law Judge

GHR Energy Corp. (Oil, Chemical and Atomic Workers Local 4-447), Good Hope, La. 16 June. 15-CA-7563, et al.; JD--165--86, Leonard M. Wagman, Adm. Law Judge

H.S.M. Machine Works, Inc. (Electronic Workers (IUE) Local 463), Hauppauge, N.Y. 16 June. 29-CA-11289; 11781; JD(NY)--44--86, Raymond P. Green, Adm. Law Judge

Howland-Steinbach-Hochschilds (Food and Commercial Workers Local 888), New York, N.Y. 17 June. 2-CA-21175; JD(NY)--50--86, Edwin H. Bennett, Adm. Law Judge

Miner Industries, Inc. (Upper South Department Ladies' Garment Workers), Milford, Del. 17 June. 5--CA--17469; JD--164--86, Frank H. Itkin, Adm. Law Judge

Morgan Services, Inc. (Laundry and Dry Cleaning Local 3017), Indianapolis, Ind. 18 June. 25--RD--924, et al.; JD--167--86, Walter H. Maloney, Jr., Adm. Law Judge

Seven-up Bottling Co., Inc. (Individual), Bayamon, PR. 16 June. 24--CA--5270; JD--160--86, James L. Rose, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Clifton Springs Hospital and Clinic (3-RC-8865), Buffalo, N.Y. 19 June. Full-time, regular part-time and regular per diem professional employees shall vote for representation by Professional Nurses Association, or for no representation.

Nellis Building Materials, Inc. (31-RD-1020), Los Angeles, Calif. 16 June. Full-time and regular part-time drivers, forklift operators, carrier operators and warehousemen shall vote for representaion by Teamsters Local 631, or for no representation.

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W2023

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

23 - 27 JUNE 1986 (W-2023)

CASES SUMMARIZED

NEWARK PUBLIC LIBRARY
JUL 22 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

A & T Manufacturing Co.	Jeff, Ky.	5
Ad Art, Inc.	Stockton, Calif.	13
Alabama Metal Products, Inc.	Rosedale and Cleveland, Miss.	11
Allied Lettercraft, Inc.	New York, N.Y.	2
Allied Lettercraft, Inc.	New York, N.Y.	10
Angelica Health Care Services	Milford, Conn.	10
Avis Rent-A-Car	Philadelphia, Pa.	2
Bay State Ambulance	Malden, Mass.	16
Benmit Division, U.S. Tubular, Inc.	Dalton, O.	5
Carpenters Local 1098	Baton Rouge, La.	7
Cowles Publishing Co.	Spokane, Wash.	5
D.H. Manufacturing Petroleum Co.	Elgin, Ill.	17
Furriers Joint Council, Food and Commercial Workers	New York, N.Y.	7
Gilroy Heating & Air Conditioning	Gilroy, Calif.	11
Gold Bond Building Products	Phoenix and Winkelman, Arizona	8
Grand Flooring & Plastering Co.	Grand Rapids, Mich.	1
Great Lakes Coal Co., Inc.	Atlanta, Ga.	4

LR1.15/2:

Harter Equipment, Inc.	Englishtown, N.J.	12
Hiysota Fuel Co., Inc.	Ralphton, Pa.	15
Horn Lumber Co.	Hamilton, O.	2
J & B Smith Co., Inc.	Atlanta, Ga.	4
Laborers Local 426	Orange, W. Orange, and Livingston N.J.	16
Mangold Markets, Inc.	Pittsburg, Kan.	3
Martin Arsham Sewing Co.	Cleveland, O.	3
Mattie C. Hall Health Care Center	Aiken, S.C.	9
Nassau Insurance Co. and Teamsters Local 917	Jamaica and Queens, N.Y.	9
PRC Recording Co.	Richmond, Ind.	1
Plumbers Local 136 (B.F. Shaw Co.)	Evansville, Inc.	8
Putnam Buick, Inc.	Burlingame, Calif.	6
Res-Care, Inc.	Edinburgh, Ind.	14
Starlite Cutting, Inc.	New York, N.Y.	17
Strawsine Manufacturing Co.	Corunna, Mich.	12
U.S. Postal Service	Detroit and Royal Oak, Mich.	3
United States Steel Corp.	Antioch, Calif.	6

OTHER CONTENTS

List of Decisions of Administrative Law Judges 19

List of Directions of Elections by Regional Directors 20

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Grand Flooring & Plastering Company (7-CA-21729; 280 NLRB No. 52) Grand Rapids, Mich. 23 June. The Board granted default summary judgment and ordered the employer to make whole five employees in amounts ranging from $17.88 to $893.20, and to make contributions on their behalf into various fringe benefit funds.

On 30 March 1984, the Board issued a decision and order (269 NLRB No. 648) directing the employer to pay into Plasterers Local 115's fringe benefit funds all those contributions it had unilaterally refused to pay, and to reimburse unit employees for expenses incurred because of the employer's unlawful conduct. A controversy then arose over the amounts due.

Default summary judgment was granted on employer failure to file an answer to the Regional Director's backpay specification.

(Chairman Dotson and Members Dennis and Babson participated.)

***

PRC Recording Company (25-CA-14830, 14508; 280 NLRB No. 77) Richmond, Ind. 24 June. The Board agreed with an administrative law judge that the discharge of 21 strikers was justified because they engaged in misconduct sufficiently serious to put them beyond the protection of the Act. Contrary to the judge, the Board further found that the discharge of three other strikers was not unlawful.

The Board noted that two of the three strikers threw nails on the company driveway--an action which, the Board found, tended to coerce or intimidate nonstriking employees in the exercise of their rights. The third employee together with other strikers, surrounded a car and beat on it with clubs, the Board said. It thus held that the discharge of the third striker did not violate the Act.

Chairman Dotson dissented from his colleagues' conclusions with respect to two aspects of this case. He would not find that the employer violated the Act by threatening to make regressive bargaining proposals should the employees strike. He also would not agree with his colleagues and the judge that the company's backpay liability should not be tolled for the period after the employer offered the unfair labor practice strikers reinstatement to the jobs they held at the time they commenced their strike.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by the Electrical Workers (IBEW) Local 2043; complaint alleged violation of the Act's Section 8(a)(1), (3), and (5). Hearing at Richmond, 6 December 1982 and 3 March 1983. Adm. Law Judge Robert W. Leiner's decision issued 18 November 1983.

***

The John M. Horn Lumber Co. (9-RC-14686; 280 NLRB No. 69) Hamilton, Ohio. 24 June. Members Dennis and Babson adopted a hearing officer's recommendation to overrule objections alleging that actions of Carpenters Local 415's organizing committee destroyed the laboratory conditions necessary for a fair and free election. They certified the union as the collective-bargaining representative of production and maintenance employees.

Dissenting, Chairman Dotson would find that the union created an atmosphere of fear and intimidation by assaulting an employee and by threatening physical violence if employees did not support the union. He would set aside the election.

(Chairman Dotson and Members Dennis and Babson participated.)

***

Avis Rent-A-Car System, Inc. (4-RC-14839; 280 NLRB No. 60) Philadelphia, Pa. 24 June. Members Dennis and Babson overruled an election objection alleging that picket line conduct by mechanics represented by Machinists Local Lodge 724 did created an atmosphere of fear and reprisal which interfered with shuttlers' free choice in an election involving the same union. Chairman Dotson dissented in part.

The panel majority found that although the strike lasted about six weeks, there were very few incidents of misconduct. Those which did occur were relatively mild, were not directed at the shuttlers--employees who drive rental cars from one facility to another--and were limited for the most part to the first week of the strike, it said.

Chairman Dotson would not find that the union's blocking gasoline delivery trucks, threatening to blow one of them up, and waving a fiery torch at another are "relatively mild." He would set aside the election held 22 October 1981.

(Chairman Dotson and Members Dennis and Babson participated.)

Allied Lettercraft Co., Inc. (2-CA-17724(E); 280 NLRB No. 92) New York, N.Y. 24 June. The Board concluded that the General Counsel was substantially justified in alleging and prosecuting an allegation--that the employer had unlawfully discharged David Calandra--from the time the complaint was amended in March 1981 until the allegation was withdrawn in December 1981.

The Board found that the General Counsel had responded appropriately by withdrawing the Calandra allegation as soon as she knew that witnesses necessary to sustain Section 8(a)(3) discrimination theories were either not credible or not available.

Allied Lettercraft's application for an award under the Equal Access to Justice Act was denied.

(Chairman Dotson and Members Dennis and Babson participated.)

***

Mangold Markets, Inc. (17-CA-11134; 280 NLRB No. 90) Pittsburg, Kansas. 24 June. The Board sustained an administrative law judge decision that the employer was a legal successor in the operation of a grocery store whose meat department employees had been historically represented by Food and Commercial Workers Local 340 and that Mangold Markets had refused to bargain in good faith with the union as such representative after its takeover of the store, in violation of the Act.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Food and Commercial Workers Local 340; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Pittsburgh, 30 November 1982. Adm. Law Judge Timothy D. Nelson's decision issued 27 April 1983.

* * *

U.S. Postal Service (7-CA-23958(P); 280 NLRB No. 80) Detroit and Royal Oak, Mich. 24 June. Members Dennis and Babson held the employer violated the Act by refusing to furnish American Postal Workers, Detroit District Area Local with names of union stewards and officers who had applied for supervisory positions.

Member Johansen would dismiss the complaint. He noted the union did not submit any evidence in support of its contention of a potential conflict of interest in union stewards or officers applying for supervisory positions, and concluded that the information was neither relevant to collective bargaining nor concerned with a mandatory bargaining subject, but "would interfere greatly with the Respondent's right to name its own supervisors."

The panel majority found the requested information did relate to the union's statutory function, writing that "the possibility of disloyalty by a union official or steward undermines employee confidence" in the union.

Members Dennis and Babson also wrote that "the Union is not seeking to limit an employee pool of potential supervisors; it is merely prescribing the qualifications or limitations of those who will be its agents."

(Members Dennis, Johansen and Babson participated.)

Charges filed by American Postal Workers; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Detroit, 9 April 1985. Adm. Law Judge Robert W. Leiner's decision issued 1 July 1985.

* * *

Martin Arsham Sewing Co. (8-CA-11894; 280 NLRB No. 81) Cleveland, Ohio. 24 June. Members Dennis, Babson and Stephens concluded that the General Counsel has raised substantial issues of fact and law material to whether the Board should impose personal liability upon Martin Arsham for backpay remedy and they accordingly remanded the case for a hearing before an administrative law judge on those issues.

Dissenting Chairman Dotson would find, in accord with a May 1985 Board decision (275 NLRB No. 90), that the General Counsel had failed to

demonstrate that Martin Arsham, as president and plant manager of the employer, committed any act which would justify piercing the corporate veil to find Arsham personally liable. He also noted that the General Counsel, in this supplemental motion, has again failed to explain why Arsham's alleged fraudulent conversion of company assets to his personal use is not a matter more appropriately resolved by a bankruptcy court rather than by the Board.

Member Johansen would dismiss the General Counsel's supplemental motion for determination of personal liability as untimely filed.

Member Dennis, who dissented in the 1985 ruling since in her view the General Counsel's initial motion on its face alleged facts sufficient to find Arsham personally liable, joined in directing a hearing here, for the purpose of forming a majority.

(Full Board participated.)

* * *

Great Lakes Coal Company (25-CA-14038, 14287; 280 NRLB No. 70) Linton, Ind. 23 June. Granting summary judgment, the Board ordered the employer to pay Garyl L. Griffith the sum of $47,386.85 for losses he suffered when he was unlawfully discharged (268 NLRB 1207 (1984)).

Summary judgment was granted on employer failure to file an answer to the backpay specification.

(Chairman Dotson and Members Dennis and Johansen participated.)

General Counsel's motion for summary judgment filed 15 May 1986.

***

J & B Smith Company, Inc. (10-CA-21267; 280 NLRB No. 57) Atlanta, Ga. 23 June. The Board affirmed an administrative law judge's decision that the employer violated the Act by transferring Archie Foster to a more onerous and less desirable job and then discharging him on 24 September 1985 because of his activities for Truck Drivers and Helpers local 728.

In September 1985, the judge found, the company president asked Foster why he wanted the union, accused him of passing out union cards, and asked the identity of other employees helping him to do so. When Foster replied that he was the only one distributing cards, the company president "reamed him out" and threatened to lock him up, the judge said. He held that by these actions, and by the transfer and discharge of Foster, the employer violated the act.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Truck Drivers and Helpers Local 728; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Atlanta, 15 January 1985. Adm. Law Judge Howard I. Grossman's decision issued 28 March 1986.

A & T Manufacturing Co. (9-CA-15746 et al.; 280 NLRB No. 106) Jeff, Ky. 24 June. The Board sustained an administrative law judge's supplemental decision ordering the employer to reimburse 25 employees for loss of earnings suffered by reason of employer discrimination, as found in earlier decision, 265 NLRB No. 156 (1982) and enforced by the U.S. Court of Appeals for the Sixth Circuit.

The individual amounts of backpay range from $96 for one employee to more than $44,500 for another.

The employer admitted backpay liability for 17 of the discriminatees, but with regard to the eight remaining, the employer claimed no backpay is due them beyond April 1981 when they would have been laid off.

The judge did not credit general statements of the company president that the discriminatees in any case would have been laid off for lack of work.

(Members Dennis, Babson and Johansen participated.)

Supplemental decision of James T. Youngblood issued 13 November 1985.

* * *

Benmit Division, U.S. Tubular, Inc. (8-CA-17956; 280 NLRB No. 83) Dalton, Ohio. 24 June. Upholding the decision of an administrative law judge, the Board found that the employer illegally discharged John Beal on 25 September 1984 and demoted Jeffrey Davis because of their activities for the Steelworkers.

The employer was also found guilty of unlawful interrogation and various illegal threats in connection with employee union activity. The employer still further violated the Act by disconnecting telephones and vending machines and by rescheduling shifts to separate and interfere with employee contacts, and by prohibiting an employee from having union literature on company premises and ordering him to clock-out and remove such literature, the judge found.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Steelworkers; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Canton, 29-30 May 1985. Adm. Law Judge Richard H. Beddow, Jr.'s decision issued 22 November.

* * *

Cowles Publishing Co. (19-CA-14273, 14302; 280 NLRB No. 105) Spokane, Wash. 24 June. Members Dennis and Stephens affirmed the conclusion of an administrative law judge that the employer violated the Act in refusing to execute a contract with Service Employees Local 6 or to furnish the union with bargaining unit information.

Chairman Dotson would find that the employer was privileged to withdraw recognition from the union because it entertained a reasonable good-faith doubt of the union's continued majority status based on sufficient objective considerations.

Noting that the union for seven months had not sought negotiations to break an impasse, Chairman Dotson said he would not compel the employer to continue to recognize "a union which had long abandoned the bargaining unit."

Lack of contact between the union and the employer from April to November 1981, the majority held, was inadequate to constitute an objective basis for doubting the union's continued majority status.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Service Employees Local 6; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Spokane, 7 December 1982. Adm. Law Judge Joan Wieder's decision issued 7 April 1983.

* * *

United States Steel Corp. (20-CA-19446; 280 NLRB No. 98) Antioch, Calif. 24 June. Affirming the decision of an administrative law judge, the Board found that the employer, which closed its San Francisco warehouse in 1985 and transferred those operations to a facility in Antioch, California, violated the Act by recognizing ILWU Local 6 as bargaining agent of drivers at Antioch and by conditioning employment on their joining or paying dues to Local 6.

The employer, which had not employed drivers at San Francisco, and Local 6 contended that the drivers hired for work at Antioch were a proper accretion to a warehouse unit and that therefore recognition of Local 6 was lawful.

In disagreement, the judge concluded that the employer unlawfully offered premature or prehire recognition to Local 6 concerning the drivers at Antioch and that the drivers were not a lawful accretion.

Agreeing there was no accretion, the Board commented in a footnote that the two employee groups--warehouse employees and drivers--continued to maintain separate identities despite certain changes made in the drivers' duties.

(Member Dennis, Johansen and Babson participated.)

Charges filed by Teamsters Local 85; complaint alleged violation of Act's Section 8(a)(1), (2) and (3). Hearing at San Francisco, 29-30 May and 3 June 1985. Adm. Law Judge Jay R. Pollack's decision issued 30 August.

* * *

Putnam Buick, Inc. (20-CA-18523; 280 NLRB No. 101) Burlingame, Calif. 24 June. Chairman Dotson and Member Dennis dismissed the complaint alleging that the employer committed a bargaining violation by attempting to deal directly with mechanic and service writer unit employees concerning their terms and conditions of employment.

Dissenting Member Johansen would find that statements made by auto dealership president Joseph Putnam at employee meetings invited a bargaining

exchange between the employer and its employees in violation of its bargaining obligation toward Machinists District 190, Local 1414.

The panel majority found that Putnam had met with employees to inform them of the specific content of proposals the employer had already presented to the union, so that there would be no confusion or misunderstanding on which proposals the employees would later be voting. The majority did not view Putnam's remarks as coercive.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Machinists; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at San Francisco, 23 May 1984. Adm. Law Judge George Christensen's decision issued 28 December 1984.

* * *

Carpenters Local 1098 (15-CB-2976; 280 NLRB No. 102) Baton Rouge, La. 24 June. Members Dennis and Johansen dismissed the complaint alleging that the union violated the Act by picketing the home of Henry Nevin Bretz, vice-president, general manager and chief bargaining negotiator of Milton J. Womack, Inc.

The panel majority agreed with an administrative law judge who in dismissing had examined the wording of the picket signs supporting a lawful economic objective, the timing of the picketing in relation to impasse in negotiations, and the peaceful and restrained nature of the demonstration.

Chairman Dotson would find a violation. "I find it clear that the daily picketing of Bretz' residence, notwithstanding the ostensibly 'peaceful' nature of the picketing, carried the foreseeable, likely effect of interfering with his duties as the Employer's collective-bargaining representative," he wrote.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Milton J. Womack, Inc.; complaint alleged violation of Act's Section 8(b)(1)(B). Hearing at Baton Rouge, 6 June 1985. Adm. Law Judge J. Pargen Robertson's decision issued 6 August.

* * *

Furriers Joint Council, Food and Commercial Workers (2-CB-9469, 9650; 280 NLRB No. 107) New York, N.Y. 24 June. The Board found merit in exceptions to an administrative law judge's failure to find that the union violated the Act by requiring its members to pay their back dues before receiving their vacation paychecks.

The Board relied on Musicians Local 47 (American Broadcasting Co.), 255 NLRB 386 (1981) in which the respondent union, like the union, here assumed responsibility of transmitting paycheck to its members.

In finding the violation, the Board wrote: "In order to enforce its members' financial obligations, a union may only seek the discharge of employees who do not pay their periodic dues; a union may not resort to other methods, such as withholding part or all of a paycheck, to force compliance with membership obligations."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Associated Fur Manufacturers and United Fur Manufacturers; complaint alleged violation of Act's Section 8(b)(1)(A) and (2). Hearing at New York, 6 May and 28 June 1983. Adm. Law Judge Harold B. Lawrence's decision issued 7 February 1984.

* * *

Plumbers Local 136 (B.F. Shaw Company) (25--CB--4986--2, et al.; 280 NLRB 99) Evansville, Ind. 24 June. In agreement with an administrative law judge, the Board decided that the union violated the Act by refusing to provide Jerry Richey with copies of its out-of-work lists, referrals and other records reflecting all applications for referral from its hiring hall as lawfully requested by him.

On other allegations, the General Counsel did not prove that the union discriminated against three charging parties on the basis of union membership or in retaliation against them for exercise of their rights under the Act or that the union discriminated generally against applicants on the basis of union membership.

The Board was not presented with the question, distinct from the issue of discrimination based on union membership, whether the hiring hall was operated on the basis of unlawfully arbitrary factors.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Individuals; complaint alleged violation of the Act's Section 8(b)(1)(A). Hearing at Indiana, on various dates between February 28 and March 10, 1983. Adm. Law Judge William F. Jacob's decision issued 12 Aug. 1983.

* * *

Gold Bond Building Products, Division of National Gypsum Co. (28--RD--524; 280 NLRB No. 116) Phoenix and Winkelman, Arizona. 24 June. The Board sustained an election objection, filed by Boilermakers Local D242, alleging the employer interfered with a 14 March 1985 election by conducting raffles for employees shortly before the election was held. A second election was directed.

The Board noted that the raffles were conducted and the prizes, which were of substantial value, were awarded within two weeks before the election; and that participants in the raffles were required to identify themselves on entry forms.

Chairman Dotson found it unnecessary to pass on the raffle objection, in light of his adoption of the hearing officer's recommendation to sustain union objection 10 which alleged that the employer interfered with the election by giving

away jackets bearing its insignia to unit employees during the last three days before the election.

Member Dennis did not adopt the recommendation to sustain objection 10. She did not think that gifts of insignia clothing, of small value, tend to create in the recipient a feeling of obligation to favor the donor in an election.

Based on his disposition of the raffle objection, Member Babson found it unnecessary to pass on objection 10.

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

Nassau Insurance Co. and Teamsters Local 917 (29--CA--6478, et al.; 280 NLRB No. 103) Jamaica, Queens, N.Y. 24 June. The Board upheld an administrative law judge decision that Teamsters Local 917 illegally threatened employees of Nassau and other companies, threatened supervisors and agents of Nassau, and attempted to prevent employees of Nassau from entering or leaving the plant. Charges against Nassau were dismissed.

In light of the Board agreement with the judge that the union engaged in an unprotected strike, the Board found it unnecessary to pass on any striker reinstatement rights, including Nassau's rights to refuse to rehire employees engaged in strike misconduct.

The Board also agreed that the union unlawfully insisted upon nonmandatory subjects of bargaining and engaged in a strike to support its demands for nonmandatory bargaining subjects. Such a strike, the Board ruled, is not only unprotected but also is unlawful as a breach of the duty to bargain.

In light of the unlawful union insistence on its bargaining demands and its attempt to enforce those demands through unlawful strike action, the Board concluded that Nassau's failure to negotiate in response to union requests did not violate the Act.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by individual; complaint alleged violation of the Act's Section 8(b)(1)(A) and 8(a)(1), (3) and (5). Hearing at Brooklyn and New York, N.Y., on 74 days between 3 March and 10 November 1980. Adm. Law Judge Eleanor Macdonald's decision issued 4 March 1982.

* * *

Mattie C. Hall Health Care Center (11-CA-11952; 280 NLRB 129) Aiken S.C. 24 June. Finding the employer raised no issue properly litigable in this unfair labor practice proceeding, the Board granted summary judgment, and found the employer unlawfully refused to bargain with Local 1199, National Union of Hospital and Health Care Employees and refused to furnish the union relevant bargaining

information following the union certification as representative of a service and maintenance unit.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Hospital and Health Care Employees Local 1199; complaint alleged violation of the Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 21 April 1986.

* * *

Angelica Healthcare Services Group (39--CA--2994; 280 NLRB No. 100) Milford, Conn. 24 June. Finding that no material issues of fact exist with regard to the company refusal to furnish bargaining information requested by the Clothing and Textile Workers, the Board granted summary judgment, found a bargaining violation, and ordered the employer to furnish the information which included the names, addresses, titles, hiring dates, wage rates and hours of unit employees.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Clothing and Textile Workers; complaint alleged violation of the Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 8 May 1986.

* * *

Allied Lettercraft Co., Inc. (2--CA--17724; 280 NLRB No. 113) New York, N.Y. 24 June. The Board, with Chairman Dotson dissenting, agreed with an administrative law judge's supplemental finding that the total net backpay for Victor Ramos, exclusive of interest, is $10,472 for losses suffered by reason of illegal employer discrimination which the Board found in a 1984 decision reported at 272 NLRB No. 97.

Under the analysis set forth in his dissent in Ad Art, Inc., 280 NLRB No. 114, issued today, Chairman Dotson would deny backpay in this proceeding on the basis of the claimant's attempted concealment of interim earnings.

The judge found that even if Ramos failed to properly report interim earnings at two employers, that would not affect the backpay award as those jobs were held in the third quarter of 1983, a period beyond which the General Counsel was seeking backpay.

However, the judge did find that the employer met its burden of establishing that Ramos improperly concealed earnings of the third quarter of 1981, and he thus excluded that quarter from Ramos' backpay.

(Chairman Dotson and Members Dennis and Babson participated.)

Hearing at New York, N.Y., in March and April 1985. Adm. Law Judge Raymond P. Green's supplemental decision issued 30 August 1985.

Alabama Metal Products, Inc. and its alter ego Delta Laminating, Inc. (26--CA--10265; 280 NLRB No. 123) Rosedale and Cleveland, Miss. 24 June. In agreement with the recommendations of an administrative law judge, the Board dismissed allegations that the employer violated the Act by refusing to extend Alabama Metal's contract with Aluminum Workers Local 250 to employees of Delta Laminating and by refusing to recall from layoff status employees of Alabama Metal for work at Delta Laminating.

As put by the judge, the "single critical issue presented in the case and upon which all alleged violations of the Act are hinged is whether Alabama Metal and DLI are alter egos or whether they constitute a single employer operating as a single integrated enterprise."

While the Board agreed with the judge's conclusion that Delta Laminating is not the alter ego of Alabama Metal, the Board contrary to the judge, would not find Delta Laminating and Alabama Metal to be a single employer and therefore did not reach the issue of accretion in dismissing the complaint.

Because he agreed with the judge's finding that the Delta Laminating facility constitutes a separate appropriate unit and not an accretion to the Alabama Metal unit, Member Johansen found it unnecessary to determine whether Alabama Metal and Delta Laminating are a single employer.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Aluminum and Glass Workers Local 250; complaint alleged violation of the Act's Section 8(a)(1),(3) and (5). Hearing at Rosedale, Miss, 12-13 December 1983. Adm. Law Judge Hutton S. Brandon's decision issued 16 March 1984.

* * *

Gilroy Heating & Air Conditioning (32--CA--6832; 280 NLRB No. 121) Gilroy, Calif. 23 June. Members Johansen and Babson upheld an administrative law judge decision that Gilroy Sheet Metal, Inc. is not the alter ego of Gilroy Heating and Air Conditioning and thus Gilroy Sheet Metal has not violated the Act by failing to recognize Sheet Metal Workers Local 309 and to assume the contract between the union and the predecessor employer.

Noting that Gilroy Heating & Air and Gilroy Sheet Metal have the same management, business purpose, operation, equipment, supervision and the same de facto ownership, Member Dennis would find alter ego status. She would remand the case to the judge to determine what, if any, bargaining obligation Gilroy Heating & Air had at the time Gilroy Sheet Metal began operations and refused to deal with the union.

Among other factors upon which the panel majority relied was the failure of evidence to show that hostility toward the union was a motive for terminating Gilroy Heating & Air and for founding Sheet Metal. Cessation of one company and formation of the other resulted from matters unrelated to the union, including personal health, financial and marital difficulties, the majority noted.

(Members Dennis, Johansen, and Babson participated.)

Charges filed by Sheet Metal Workers Local 309; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Santa Clara, Calif., 8 May 1985. Adm. Law Judge Gerald A. Wacknov's decision issued 5 August 1985.

* * *

Strawsine Manufacturing Co. (7--CA--18001; 19464; 280 NLRB No. 63) Corunna, Mich., Argos, Ind. 23 June. The Board agreed with an administrative law judge that the employer violated the Act by closing its Corunna, Michigan, plant and surreptitiously transferring the operations to Argos, Indiana, to escape union obligations at Corunna.

Although the charge was filed more than six months after the plant closing, the Board concluded that Section 10(b) of the Act did not bar the complaint because the employer had misrepresented company plans about closing the facility and concealed from Auto Workers Local 743 the decision to relocate to Argos. The limitations period did not begin to run until the union had knowledge of the relocation decision, it was found.

The Board also found that the employer had illegally failed to bargain about the decision to relocate. Where, as here, such a decision is motivated by antiunion reasons, the Board commented, the employer is not exempt from a bargaining obligation.

A restoration order requiring the employer to return its operations from Argos to Corunna was held inappropriate, the Board applying other remedies such as reinstatement offers and travel expenses to Argos.

(Members Dennis, Johansen, and Babson participated.)

Charges filed by Autoworkers Local 743; complaint alleged violation of the Act's Section 8(a)(1), (3) and (5). Hearing at Burton, Mich., on 2, 3, and 4 June, and at Detroit on 13, 14, and 15 July, and at Dallas, Texas on 27 and 28 July 1981. Adm. Law Judge Arline Pacht's decision issued 23 December 1981.

* * *

Harter Equipment, Inc. (22--CA--11527; 280 NLRB No. 71) Englishtown, N.J. 24 June. The Board ruled that Harter Equipment, Inc. did not violate the Act by hiring temporary replacements after lawfully locking out permanent employees for the sole purpose of bringing economic pressure to bear in support of a legitimate bargaining position. The opinion by Chairman Dotson and Members Johansen and Babson, which overruled Inland Trucking, held that "absent specific proof of antiunion motivation, an employer does not violate Section 8(a)(3) and (1) by hiring temporary replacements in order to engage in business operations during an otherwise lawful lockout."

Relying on the Supreme Court's decisions in American Ship Building and Brown Food Store, the Board concluded that using temporary employees after a

lawful lockout to bring about economic pressure in support of legitimate bargaining demands "(1) is a measure reasonably adapted to the achievement of a legitimate employer interest and (2) has only a comparatively slight adverse effect on protected employee rights. We reject the argument that the Board should require more proof of an employer's legitimate purpose in such a case or should engage in balancing employer interests against employee rights to determine whether the Act has been violated, even in the absence of independent proof of unlawful employer motivation."

In dissent, Member Dennis stated that "using such replacements after a legitimate bargaining lockout-- except in narrowly circumscribed and carefully defined 'defensive' situations-- is inherently destructive of protected employee rights and violates Section 8(a)(1) and (3) of the Act."

(Chairman Dotson and Members Dennis, Johansen, and Babson participated.)

Charges filed by Operating Engineers Local 825; complaint alleged violation of the Act's Section 8(a)(3) and (1). Hearing at Newark, N.J. 20-21 January 1983. Adm. Law Judge Steven Davis' decision issued 22 April 1983.

* * *

Ad Art, Inc. (32--CA--227; 280 NLRB No. 114) Stockton, Calif. 24 June. Reaffirming American Navigation Co., 268 NLRB 426 (1983), the Board denied backpay to a discriminatee whose willful concealment of earnings made it impossible to calculate backpay. The majority opinion by Member Dennis, Johansen and Babson affirmed an administrative law judge's decision that issued prior to American Navigation.

The Board held in American Navigation that it would deny backpay only for those calendar quarters in which a discriminatee intentionally concealed interim employment. It also stated as an exception in footnote 6 that it would "continue to deny all backpay claimants whose intentionally concealed employment cannot be attributed to a specific quarter or quarters because of the claimant's deception."

The majority said the instant case fell within that exception. The discriminatee withheld relevant evidence, testified falsely, destroyed records to cover up misstatements, and attempted to prevent a witness from testifying. The judge concluded and the Board agreed that credence could not be given to the discriminatee's testimony, rendering a backpay calculation impossible.

Chairman Dotson and Member Stephens issued concurring opinions. Chairman Dotson said he would overrule American Navigation and deny all backpay to all claimants "fradulently concealing interim earnings because such misconduct renders adequate and reliable ascertainment of backpay impossible, wastes the Board's resources, and does too little to discourage the practice."

Member Stephens stated the rule in cases cited in footnote 6 of American Navigation "is not logically limited to concealment of interim earnings, but would apply to willful misrepresentations concerning any category of

information bearing on backpay that affects the backpay calculation in all backpay quarters."

(Full Board participated.)

Hearing at Stockton on 21 December 1981, and 12-13 January, and 2 March 1982. Adm. Law Judge Richard D. Taplitz's supplemental decision issued 19 July 1982.

* * *

Res-Care, Inc. (25--RC--7917; 280 NLRB No. 78) Edinburgh Ind. 24 June. The Board reaffirmed the basic test set forth in National Transportation for determining whether assertion of jurisdiction over an employer providing services to or for an entity exempt under Section 2(2) of the Act is warranted. The opinion by Chairman Dotson and Members Dennis, Johansen and Babson reversed a Regional Director's decision.

The issue arose in an election case involving the Retail, Wholesale and Department Store Union and Res-Care, a for-profit corporation that operates residential job corps centers under a contract with the U.S. Department of Labor. The employer claimed it was exempt from NLRB jurisdiction because its labor relations policy was controlled by the Labor Department, precluding effective collective bargaining. The Regional Director, however, found under National Transportation and Singer Co. that the employer retained sufficient control over its employees' conditions of employment to permit meaningful collective bargaining.

In National Transportation, the Board held that it no longer would examine the relationship between the purposes of the exempt institution and the services provided by the nonexempt employer to determine whether the employer's operations are intimately related to an exempt government function. Instead, the inquiry would be whether the employer itself met the definition of an "employer" under Section 2(2) and if so, whether the employer retained sufficient control over the employment conditions to enable it to engage in "effective" or "meaningful" bargaining.

In the instant case, the Board said in applying the National Transportation test, it "will examine closely not only the control over essential terms and conditions of employment retained by the employer, but also the scope and degree of control exercised by the exempt entity over the employer's labor relations..."

The decision overruled Singer, where the Board took jurisdiction over a job corps center operated under contract with DOL virtually identical to the instant case. The Board said in the earlier case it "did not give adequate weight to the scope and degree of control exercised by DOL over the employer's labor relations."

Declining to assert jurisdiction over Res-Care, the Board concluded: "In every sense, it is DOL, not Res-Care, which retains ultimate discretion for setting

wage and benefit levels of the job corps center, and thus effectively precludes Res-Care from engaging in meaningful collective bargaining." It added: "If an employer does not have the final say on the entire package of employee compensation, i.e. wages and fringe benefits, meaningful bargaining is not possible."

Member Stephens concurred in part and dissented in part. He agreed with the majority that the basic "control" test of National Transportation and not the "intimate connection" test, is the proper standard for determining whether the Board has jurisdiction over an employer under contract with an entity exempt under Section 2(2). In this case, however, he said "the majority has exaggerated the significance of powers possessed by DOL... /I/t has thereby created a precedent for permitting government authority that is purely theoretical and unlikely to be exercised to compel the exclusion from our processes of employment relationships in which meaningful collective bargaining could take place.

(Full Board participated.)

* * *

Hiysota Fuel Co., Inc. (6--CA--15852 et al.; 280 NLRB No. 89) Ralphton, Pa. 24 June. Members Dennis, Babson and Stephens concluded that the employer violated the Act by refusing to make health and benefit fund contributions required under its collective-bargaining agreement with the United Mine Workers and its Local 1023 from 2 June until 8 September 1982, when Chapter 11 bankruptcy proceedings were instituted.

The majority decision upholds an administrative law judge who wrote that "the law is clear that an employer's repudiation of contract terms requiring payments into benefit funds violates Section 8(a)(5)."

Dissenting Chairman Dotson stated that the Board in his opinion "should decline to become involved in contract disputes. As the Respondents' conduct constitutes nothing more than a contract violation, I would dismiss the complaint in its entirety."

Member Johansen viewed the failure to make fund payments in this case as "no more than a breach of contract," not repudiation of contractual obligations. He recognized "limited circumstances" when employer actions "are mandated by factors beyond an employer's control and should not be deemed an unfair labor practice."

(Full Board participated.)

Charges filed by Mine Workers Local 1023; complaint alleged violation of the Act's Section 8(a)(5) and (1). Hearing at Ebensburg on 15-16 November 1984. Adm. Law Judge Michael O. Miller's decision issued 4 March 1985.

* * *

Bay State Ambulance (1--CA--20237; 20256; 280 NLRB No. 122) Malden, Mass. 24 June. The Board held that the employer committed several violations of the Act by making certain threats and promises and by discharging two employees. The opinion is by Chairman Dotson and Memers Dennis and Babson.

It adopted the administrative law judge's finding that the employer violated Section 8(a)(1) with a memorandum from the company president to employees stating: "My sincere belief is that if a union were to represent you in our operations, it would not work to your benefit but to your serious harm." On this point, Chairman Dotson would not have found a violation because he did not see a link between the memo and subsequent unfair labor practices committed by the employer.

The judge found that by telling an employee that "the union probably won't get you anything more than you have now," a supervisor violated Section 8(a)(1). The Board disagreed, holding the statement was merely one of opinion, protected by Section 8(c) of the Act, from which no threat reasonably could be perceived by the employee.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Teamsters Local 25; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Springfield, Mass., in March and May 1983. Adm. Law Judge Harold Bernard, Jr.'s decision issued 7 June 1984.

* * *

Laborers Local 426 (22--CB--4580; 4712; 280 NLRB No. 74) Orange, W. Orange, and Livingston, N.J. 24 June. The union violated the Act by failing to refer Joseph Brown to jobs because of his nonmembership in the union, the Board found in agreement with an administrative law judge.

The Board however did not agree with the judge's recommendation to make whole "all other nonmember applicants who were similarly discriminated against for any loss of earnings they may have suffered by reason of such discrimination practiced against them."

Such an order, the Board ruled, is inappropriate since the record did not reveal that any identifiable nonmember other than Brown at any time applied for work through the union hiring hall and was denied referral, or was in any other manner discriminated against in such a way as to have suffered loss of earnings. The Board thus limited the "make whole" portion of the judge's remedy.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by individual; complaint alleged violation of the Act's 8(b)(1)(A) and (2). Hearing at Newark, N.J., on 3, 11, and 12 January 1983. Adm. Law Judge Howard Edelman's decision issued 23 March 1983.

* * *

Starlite Cutting, Inc. (2-CA-18563; 280 NLRB No. 120) New York, N.Y. 24 June. The Board established a new rule under which discriminatees will have one year to come forward to collect backpay awards after a Supplemental Decision and Order has been issued computing the award. Absent extraordinary situations, discriminatees who do not come forward or advise the General Counsel of their whereabouts within the one-year escrow period would forfeit their backpay.

The opinion by Chairman Dotson and Members Johansen and Babson, which overruled Duncan Foundry & Machine Works, stated: "In the event that the General Counsel at the end of the one-year escrow period has failed to locate the discriminatee, we adhere to the rule established by the Eighth Circuit in NLRB v. Brown & Root, and hold that the award shall lapse and the full net backpay amount for that discriminatee shall be returned to the respondents."

In dissent, Member Dennis said that considering unfair labor practice proceedings may take "a substantial number of years to complete, it is not surprising that some discriminatees fail to keep the General Counsel informed despite the pendency of an unfair labor practice case." She would not close proceedings to unavailable discriminatees after one year, contending the new policy "will unfairly penalize those discriminatees who fail to keep the General Counsel informed of their whereabouts during protracted litigation. The penalty of total backpay forfeiture is out of all proportion to such discriminatees' neglect."

Member Stephens concurred in part and dissented in part. He concurred in setting a one-year escrow period, but he would permit the Regional Director to apply to the Board for an extension as was permitted in Top Mfg. Co.

Member Stephens dissented from the majority's holding that a respondent's liability should be deemed extinguished at the end of the escrow period. He stated: "I would not provide for any automatic extinction of liability, but rather would leave it open to a respondent to raise a defense of laches, in which it could show that its ability to examine the discriminatee on the subject of interim earnings and mitigation has been prejudiced and that extinction of backpay liability or reduction of the amount owed is warranted."

(Full Board participated.)

* * *

D.H. Martin Petroleum Co. (13--CA--24981; 280 NLRB No. 58) Elgin, Ill. 23 June. The Board sustained an administrative law judge's decision that the employer violated the Act by terminating William Lowell Bailey on 21 March 1985 because of his protected activity in seeking Teamsters Local 179 to file a grievance against the employer.

The judge discredited the employer claim that it would have discharged Bailey for legitimate business reasons even though he had not engaged in protected activity.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 179; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Chicago, Ill., on 29 August 1985. Adm. Law Judge Lowell Goerlich's decision issued 11 December 1985.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Union Boiler Co. (Boilermakers Local 667), Nitro, W. Va. 26 June. 9--CA--22661; JD--176--86, Thomas A. Ricci, Adm. Law Judge

Hemisphere Broadcasting Corp. (WBCN) (Individual), Boston, Mass. 26 June. 1-CA-23,094; JD--178--86, Norman Zankel, Adm. Law Judge

Association de Condomines Del Condominio Villas Del Mar (Tronquistas de Puerto Rico Local 901), San Juan, P.R. 27 June. 24-CA-5260; JD-169-86, Thomas E. Bracken, Adm. Law Judge

Schwartz Manufacturing Co. (Electrical Workers (UE)), Sioux Falls, SD. 27 June. 18-CA-9323 et al.; JD-161-86, Michael O. Miller, Adm. Law Judge

E/M Corp. (Steelworkers), Dayton, O. 30 June. 9--CA--22891; JD-181-86, Thomas D. Johnston, Adm. Law Judge

Matai (U.S.A.) Inc. (Individuals), Springfield, O. 27 June. 9-CA-22565, et al.; JD-175--86, Irwin Kaplan, Adm. Law Judge

Painters Local 277 (Individual), Atlantic City, N.J. 27 June. 4-CB-4170; 4941; JD--177--86, Claude R. Wolfe, Adm. Law Judge

Teamsters Local 600 and 54 (Individual and Riverway Harbor Service St. Louis, Inc.), St. Louis, Mo. 27 June. 14--CB--6457 et al.; JD--158--86, Peter E. Donnelly, Adm. Law Judge

Kanakis Company, Inc. and Painters Local 1269 (Individual), Allentown, Pa. 27 June. 4-CA-12997; 4-CB-4460; JD-173-86, Michael O. Miller, Adm. Law Judge

The Martin Brower Co. (Individual), Stockton, Calif. 12 June. 32--CA--7671; JD(SF)--63--86, William J. Pannier III, Adm. Law Judge

Electrical Workers Local 617 (IBEW) (San Mateo Chapter, National Electrical Contractors Association, Inc.), San Mateo, Calif. 11 June. 20--CB--6714; JD(SF)--064--86, Harold A. Kennedy, Adm. Law Judge

Princeton Holiday Inn (Commercial Workers Local 278), Princeton, W. Va. 23 June. 9--CA--22725; JD--172--86, Thomas A. Ricci, Adm. Law Judge

Waterfront Service Co., Inc. and Port Watchmen Local 1451 (Individuals), Boston, Mass. 23 June. 1--CA--22,587; 1--CB--6124; JD--171--86, Norman Zankel, Adm. Law Judge

Lynco Millwork & Manufacturing Co. (Teamsters Local 89), New Albany, Ind. 20 June. 9--CA--22705; JD--166--86, Bernard Ries, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Ericsson, Inc. (17-RC-9833), Harrisonville, Missouri. 19 June. Full-time and regular part-time inspectors, lead inspectors, data entry clerks, and clerk/typists shall vote for representation by Teamsters Local 552, or for no representation.

The Coach House Restaurant (19-RD-2417), Seattle, Wash. 20 June. All food waitresses, cocktail waitresses, cooks, bartenders, dishwashers, and cashiers shall vote for representation by Hotel and Restaurant Employees Local 400, or for no representation.

UA-Columbia Cablevision of New Jersey (22-RC-9621), Oakland, N.J. 20 June. Design surveyors, draftspersons, senior draftspersons and engineering dispatchers shall vote for representation by Electrical Workers (IBEW) Local 827, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2024

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

30 JUNE - 3 JULY 1986 (W-2024)

CASES SUMMARIZED

ARA Ground Services, Inc.	Baltimore, Md.	4
Armour & Co.	Green Bay, Wis.	2
Central Broadcasting	Tulsa, Okla.	8
Diner's Driver-In, Inc.	Waipahu, Waimalu, Kalihi, Keeaumoku and Hawaii Kai, Hawaii	6
Galen Inc.	Ferndale & Belleville, Mich.	8
Glaziers Local 513	Labadie, Mo.	3
Heavy and Highway Construction Workers Local 158	Harrisburg, Pa.	7
Kawasaki Motors Mfg. Corp., U.S.A.	Lincoln, Neb.	2
Long Stretch Youth Home, Inc.	Frostburg, Md.	1
Marymount College of Virginia	Arlington, Va.	7
Resistance Technology, Inc.	Arden Hills, Minn.	4
Service Employees Local 3036	New York, N.Y.	5
Teamsters Local 578	Los Angeles, Calif.	3
Tri-State Culvert Mfg., Inc.	Lawrenceville, Ga.	8
United Artists Communications, Inc.	East Meadow, N.Y.	6

NEWARK PUBLIC LIBRARY
JUL 23 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

LR1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 10

List of Directions of Elections by Regional Directors 10

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Long Stretch Youth Home (5--RC--12013; 280 NLRB No. 79) Frostburg, Md. 24 June. The Board affirmed the Regional Director's assertion of jurisdiction over the employer, a nonprofit, charitable institution licensed by the Maryland Social Services Administration (MSSA) because it exercises control over economic terms and conditions of employment essential to meaningful bargaining. The majority opinion is by Members Dennis, Johansen and Babson. Members Stephens concurred in the result, noting his concurring and dissenting opinion in Res-Care, Inc. Chairman Dotson dissented.

The employer contended that it shared the state's exemption from Board jurisdiction under Section 2(2) of the Act because it performs an essential state function which local school districts would otherwise be required to provide and because MSSA closely monitors and controls its operations, including many aspects of its employment conditions.

The Board pointed to its decision in Res-Care, issued on the same day as this case, which reaffirmed the basic test enunciated in National Transportation Service for determining when assertion of jurisdiction over an employer providing services to or for an exempt entity is appropriate. National Transportation held that the single appropriate standard in determining such jurisdiction is whether the employer has sufficient control over the employment conditions of its employees to enable it to bargain effectively with a union.

The Board further explained in Res-Care that this determination should be based on an analysis of the degree of control exercised by the exempt entity over the employer's labor relations, as well as the control retained by the employer. The majority opinion held that when an employer lacks the ultimate authority to determine primary terms and conditions of employment, he lacks the ability to engage in the necessary "give and take" which is a central requirement of good-faith bargaining and which makes bargaining meaningful.

The Board did not exercise jurisdiction in Res-Care because the exempt entity in that case retained the ultimate discretion to set wage and benefit levels, thwarting meaningful bargaining. In the instant case, however, the Board found that the employer does retain sufficient control over economic terms and conditions of employment essential to meaningful bargaining. For example, MSSA does not exercise ultimate discretion over wage and benefit levels; the employer largely determines for itself what those salaries and other policies will be and "retains substantial control over economic matters which are central to the employer-employee relationship," the Board concluded.

In dissent, Chairman Dotson stated that he would return to the policy of Ming Quong Children's Center and decline to assert jurisdiction over such an institution "unless it has been demonstrated that operations like the employer's as a particular class have a massive impact on interstate commerce." He said further: "Even if the employer were not a nonprofit, charitable institution, I would not assert jurisdiction because I find that the ultimate authority for determining primary terms and conditions of its employees' employment belongs to... (MSSA)."

(Full Board participated.)

Armour and Co. (30--CA--6299; 280 NLRB No. 96) Green Bay, Wis. 24 June. Applying its deferral test in Olin Corp., the Board found that dismissal of the union's complaint about the company's refusal to bargain over allocation of severance and vacation pay was not warranted because the contract issue resolved by the arbitrator in this case is not factually parallel to the statutory issue before the Board. The opinion by Chairman Dotson and Members Dennis and Stephens affirmed an administrative law judge's decision.

In Olin Corp., the Board said deferral to arbitration was appropriate if the arbitrator has adequately considered the unfair labor practice. For the Board to reject deferral, the party seeking rejection must show that the contract issue is not factually parallel to the unfair labor practice issue, and that the arbitrator was not presented generally with the facts relevant to resolving the unfair labor practice.

The issue before the Board in the instant case was whether the employer, by refusing to bargain with the union about the allocating of severance and vacation pay, and by taking unilateral action on the allocation, violated Section 8(a)(5) and (1) of the Act.

The employer claimed that the company waived its right to engage in effects bargaining on the subject of allocation. The Board pointed out that this waiver argument was not presented to or considered by the arbitrator. It also found the arbitrator did not consider the question of whether the employer met its obligation to bargain regarding closure of the firm's plant.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Food and Commercial Workers Local 73A; complaint alleged violation of the Act's Section 8(a)(5) and (1). Hearing at Milwaukee, 16 March 1983. Adm. Law Judge Bernard Ries' decision issued 30 June 1983.

* * *

Kawasaki Motors Manufacturing Corp. (17--CA--11263; 280 NLRB No. 53) Lincoln, Neb. 23 June. The Board found lawful actions taken by the company during the union's organizing drive that included holding meetings at which the president and plant manager spoke of the plant's financial difficulties and emphasized that "survival is the most important thing." Contrary to the administrative law judge, the Board held the employer did not threaten plant closure or relocation at these meetings, in violation of the Act's Section 8(a)(1) of the Act.

During the meetings, the company also showed a videotape depicting strike violence and portraying the union as having a long and violent strike history. The videotape emphasized that one-third of the union's members were unemployed due to the union's stands. The judge concluded that the videotape presentations were unlawful but the Board disagreed. The Board said the predictions by the company representatives "were not based on reasons unrelated to economic necessities," and "the statements and videotape were expository in nature and constituted speech protected by Section 8(c) of the Act. It also found permissible a company letter urging employees to vote "No" in the union election as well as

a company statement that it would "bargain from scratch" if the union were chosen by the employees. The election was cancelled at the request of the union.

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by the Auto Workers; complaint alleged violation of the Act's Section 8(a)(1). Hearing at Lincoln, 21, 22, and 23 February 1984. Adm. Law Judge Lowell Goerlich's decision issued 20 June 1984.

* * *

Glaziers, Architectural Metal & Glass Workers Local 513 (14--CD--712; 280 NLRB No. 112) Labadie, Mo. 24 June. Members Dennis and Stephens awarded unrepresented nonsupervisory employees of Custom Contracting Company the removal of existing wooden windows and installation of preglazed aluminum replacement windows at the Care Unit Hospital in St. Louis. They also held that the union is not entitled by means proscribed by the Act to force the employer to assign the above work to employees whom it represents.

Member Johansen would quash the notice of hearing. He wrote: "The Employer held itself out as a partnership and its employees as partners. It should not be heard to complain when it was taken at its word."

The panel majority concluded that review of the facts in light of the basic tenets of partnership law demonstrates that nonsupervisory members of the employer's work force are not partners.

The purported partnership, the majority stated, is a partnership in name only and the supervisory personnel, who have been assigned the disputed work, are not true partners, but employees.

"The degree of control that the managing partner Proemsey exercises over these individuals, with minimal effective input from them, further supports a finding that their relationship is more accurately characterized as that between employer and employee," Member Dennis and Stephens said.

(Members Dennis, Johansen and Stephens participated.)

Teamsters Local 578 (21--CD--533; 538; 280 NLRB No. 95) Los Angeles, Calif. 24 June 1986. The Board quashed the notice of hearing, which described the disputed work as handling, pricing, stocking and ordering non-food and variety items in facilities of Safeway, Stores. The Board took this action to enable the Food and Commercial Workers union to pursue contractual remedies against Safeway.

As put by the Board, Safeway in this case is not the "innocent" employer that Section 10(k) was intended to protect.

It added:

> Safeway created this dispute by breaching its collective-bargaining agreement with UFCW and could have ended it by canceling its

subcontract with Wesco. Safeway voluntarily entered into an agreement with UFCW which included restrictions on subcontracting work. Shortly thereafter it nevertheless decided to subcontract unit work to Wesco. Safeway should not now be allowed to use the Board's 10(k) processes to avoid its contractual obligations.

(Chairman Dotson and Members Dennis and Babson participated.)

* * *

ARA Ground Services, Inc. (5--RC--12566; 280 NLRB No. 62) Balitimore, Md. 26 June 1986. Having been advised by the National Mediation Board that the activities and employees of ARA Ground Services are subject to the Railway Labor Act, the Board dismissed the representation petition filed by Teamsters Local 355.

(Members Johansen, Babson and Stephens participated.)

* * *

Resistance Technology, Inc. (18--CA--7702; 7836; 280 NLRB No. 117) Arden Hills, Minn. 24 June. The Board held that it no longer will find a violation when an employer instructs a supervisor to commit unlawful acts "where those instructions are neither carried out nor disclosed to the employees," overruling Cannon Electric Co. The majority opinion is by Chairman Dotson, and Members Dennis and Johansen.

An administrative law judge relied on Cannon Electric in finding that the employer's personnel manager Lambert had directed production supervisor Storey to engage in unlawful interrogation of employees about their union activities and sympathies. He further found that Lambert had acted unlawfully in directing Storey to violate the Act.

The Board stated that a violation cannot be based solely on Lambert's instructions to Storey to engage in unlawful acts. "We do not agree with the judge's finding that Lambert's instructions to Storey were unlawful in and of themselves without a showing that they were either carried out or disclosed to the employees," it held. However, it said a violation did occur when those instructions were disclosed to the employees.

In Cannon Electric, the Board held that instructions to supervisors to unlawfully obtain information concerning employees' protected activities are unlawful even if the instructions have not been carried out or disclosed to the employees. Commenting on that case, the Board stated: "The Board went too far in Cannon Electric. Clearly, action taken in contemplation of committing an unfair labor practice is not, without more, itself an unfair labor practice."

Members Babson and Stephens concurred in part and dissented in part. "We agree with our colleagues in all respects except that we believe it is unnecessary on this record to decide whether instructions to supervisors to violate the Act are proscribed by Section 8(a)(1), where those instructions were neither executed nor disclosed," they said, adding:

Our colleagues' conclusion that instructions to violate the Act cannot alone interfere with employees' rights arguably is inconsistent with established Board precedent concerning the surreptitious surveillance of union activities, and arguably inconsistent with those cases involving the discharge of supervisors for refusing to violate the Act.

(Full Board participated.)

Charges filed by Teamsters Local 970; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Minneapolis, 11 January - 16 March 1983. Adm. Law Judge Stanley M. Ohlbaum's decision issued 11 August 1983.

* * *

Service Employees Local 3036 (Linden Maintenance Corp.) (29--CB--5252; 280 NLRB No. 115) New York, N.Y. 24 June. Reversing an administrative law judge who recommended dismissing the complaint, the Board found the union failure to respond to telephone calls of Milford Moorer did not satisfy the notice requirements of Section 10(b) and that the union failure to process Moorer's grievance to arbitration, without explanation, after it promised to do so violated the Act.

Not until March 1983, when Moorer went to the union office, was he clearly informed that his grievance had been forgotten and abandoned, the Board found. The instant charge, filed a month later, was thus held timely.

The Board further held that union actions toward Moorer constituted more than mere negligence, writing "the Respondent's continued nonaction, despite statements to the contrary, amounted to a willful failure to pursue the grievance, and was therefore perfunctory."

Chairman Dotson and Member Babson ordered the union, in the event Moorer's grievance cannot now be processed, to reimburse the employee for losses, pointing out that any uncertainty should be resolved in favor of the injured employee.

Absent evidence that Moorer's grievance is meritorious, Member Dennis said, the backpay award is speculative and unwarranted.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Milford Moorer; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Brooklyn, N.Y., 2 February 1984. Adm. Law Judge Eleanor MacDonald's decision issued 12 June 1984.

* * *

Diner's Drive-In, Inc. (37--RC--2668; 280 NLRB No. 111) Waipahu, Hawaii. 24 June. Members Dennis and Babson sustained an election objection alleging the employer made a veiled threat to close if employees voted for Hotel Employees and Restaurant Employees Local 5. They set aside an election held in December 1982 showing a 128-55 vote against the union, and directed a second election.

Chairman Dotson would certify the results of the election because in his view the employer had expressed an opinion based on demonstrated facts as to the economic consequences which might reasonably be expected to result from unionization.

The statement in question, contained in a letter from the company's principal officer given employees with their paychecks four days before the election, read:

> Its /sic/ been rough on me because with the bad economy over the past three years, I was not sure how I was going to keep our doors open and the last thing any of us needs is something that would put us over the edge and might require us to close our doors permanently.

(Chairman Dotson and Members Dennis and Babson participated.)

United Artists (2-CA-18996; 19121; 280 NLRB No. 119) East Meadow, N.Y. 24 June. Affirming an administrative law judge, the Board found that the employer unlawfully interrogated employees about their union sentiments since the questioning had a tendency to restrain and coerce the exercise of their right to join a union. The opinion is by Chairman Dotson and Member Dennis and Stephens.

Former theatre manager Mancuso on several occasions told employee Jimenez that she would be fired if she signed a union authorization card. In finding a violation, the Board relied on its Rossmore House decision, which reiterated the longstanding test for evaluating whether interrogations violate the Act: whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act. In the instant case, it noted that Mancuso had virtually absolute authority to hire and fire, and he interrogated Jimenez alone in his office, and that Jimenez was not an open and active union supporter.

The subsequent theatre manager, Williams, unlawfully interrogated employees Rosado and Sanchez individually in his office, threatening to discharge each one if they refused to sign authorization cards for a company-favored union, Local 1245 of the United Food and Commercial Workers. As with Jimenez, Rosado and Sanchez were not open and active union supporters.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by General Trade Employees Local 5A; complaint alleged violation of Act's Section 8(a)(1), (2), and (3). Hearing at New York, N.Y., between 7 and 10 March 1983. Adm. Law Judge Winifred D. Morio's decision issued 19 March 1984.

Heavy and Highway Construction Workers Local 158 (Contractors Assn. of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) (4--CB--4318; 280 NLRB No. 124) Harrisburg, Penna. 24 June. The Board held overly broad the remedy recommended by an administrative law judge providing reimbursement not only for nine individuals named in the complaint and who were discriminated against because of their intraunion political activities, but for "other employees" who may have suffered similar discrimination as well.

The Board accordingly modified the recommended order by deleting any reference to other union members who may be similarly situated to the named discriminatees.

Unlike other cases where widespread discrimination against a defined and easily identified class was established, "we are unable to find that the discriminatees in this case constitute a class or that discrimination on a classwide basis occurred," the Board commented. Intraunion political dissidents, the Board held, do not form a definite group, identifiable by a single characteristic which easily separates them from others. The Board further held that discrimination against a select few dissidents is not enough to establish discrimination against all dissidents, that discrimination against each individual must be independently established based on preponderance of credited evidence.

Member Babson agreed that the judge's proposed remedy was inappropriate, but found it unnecessary to reach the issue of whether intraunion political dissidents can constitute a class, since the General Counsel failed to prove that the union referral system was "structured to discriminate" or that there was a "general policy of discrimination."

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by individual; complaint alleged violation of the Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Harrisburg, on 20 - 24 August, and 22 October 1984 and on 7, 8 and 9 January 1985. Adm. Law Judge George F. McInerny's decision issued 31 July 1985.

* * *

Marymount College of Virginia (5--UC--151; 280 NLRB No. 50) Arlington, Va. 23 June. The Board clarified a unit of all faculty and professional employees, currently represented by the Marymount College of Virginia Faculty Association, affiliated with the National Education Association, by specifically including in the unit the classifications of program coordinator and professional librarian.

The employer-petitioner contended that the Acting Regional Director should have excluded those two classifications on the ground that they are managerial and/or supervisory under the guidelines set forth by the Supreme Court in NLRB v. Yeshiva University, 444 U.S. 672 (1980).

Disagreeing with the employer position, the Board concluded that Marymount College had failed to meet the standard for collegial governance pursuant to which the Supreme Court found the Yeshiva faculty to be "managerial."

The Acting Regional Director had found that neither the program coordinators nor the professional librarians were managerial or supervisory because they neither effectively determine or control through a collegial decision-making process any academic or administrative matters nor exercise or possess any of the traditional indicia of supervisory status.

(Chairman Dotson and Members Dennis and Stephens participated.)

* * *

Galen, Inc. (7--CA--25429; 280 NLRB No. 59) Ferndale and Belleville, Mich. 23 June. The Board agreed with the General Counsel that the employer was seeking to relitigate issues decided in the underlying representation proceeding. It accordingly granted summary judgment and found that the employer had violated the Act by refusing since 16 January 1986 to bargain with Auto Workers Local 155, certified representative of a production and maintenance unit.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Auto Workers Local 155; complaint alleged violation of Act's Section 8(a)(1) and (5). General Counsel motion for summary judgment filed 24 March 1986.

Central Broadcast Company (16--CA--10432; 280 NLRB No. 56) Tulsa, Okla. 23 June. The Board concluded that the operator of Tulsa radio station KTFX-FM embarked upon an unlawful course of conduct four days after Food and Commercial Workers Local 73R in April 1982 attained majority status and demanded recognition as bargaining agent of all full-time and part-time on-air announcers and news department personnel.

The unfair labor practices included unilaterally changing bargaining unit working conditions and permanently laying off all eight employees who were union adherents.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Food and Commercial Workers Local 73R; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Tulsa in Sept. and Oct. 1982. Adm. Law Judge Howard I. Grossman's decision issued 30 June 1983.

* * *

Tri-State Culvert Mfg., Inc. (10--CA--14196; 280 NLRB No. 87) Lawrenceville, Ga. 24 June. The Board with Member Dennis dissenting in part agreed with an administrative law judge that employer withdrawal of recognition of Iron Workers Local 616 was lawful because the union had not represented a majority at the time recognition was granted; and that employer polling of employees was similarly lawful because the employer had lawful reason for polling-- to ascertain if the union had obtained majority status-- and had conducted the polling in accordance with the Strucknes standards. The complaint was dismissed.

Member Dennis would find that the employer poll was unlawful on the basis that employee sentiment toward the union was improperly influenced by the employer. In her view, the employer did not demonstrate that the employee sentiments for which it purported to conduct the poll were genuine and uncoerced.

Chairman Dotson and Member Stephens observed that Member Dennis had misinterpreted the evidence as having established that the employer assisted an employee, one Leon Sailors, in his antiunion activities and mischaracterized the judge's findings in this regard. They noted the absence of any evidentiary link tying the employer to Sailors' antiunion activities, and found the poll's alleged illegality on the basis of employer taint had not been established.

(Chairman Dotson and Members Dennis and Stephens participated.)

Charges filed by Iron Workers Local 616; complaint alleged violation of the Act's Section 8(a)(1) and (5). Hearing at Atlanta, on 22, 23, 24 and 25 October, and 6 December 1979. Adm. Law Judge Donald R. Holley's decision issued 10 July 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Teamsters Local 282 (Willets Point Contracting Corp.) (Individual), Flushing, N.Y. 19 June. 29--CB--4937; JD--168--86, William F. Jacobs, Adm. Law Judge

E/M Corporation (Steelworkers), Dayton, O. 30 June. 9-CA-22891; JD--181--86, Thomas D. Johnston, Adm. Law Judge

General Electric Co. (Machinists Local 912), Cincinnati, O. 3 July. 9--CA--22619; JD--188--86, Frank H. Itkin, Adm. Law Judge

Cassis Management Corp. (Individual), Freeport, N.Y. 3 July. 29-CA-12166; JD(NY)--59--86, James F. Morton, Adm. Law Judge

Pontiac Osteopathic Hospital (Individuals), Detroit, Mich. 27 June. 7-CA-23035; et al.; JD--170--86, William A. Pope, II, Adm. Law Judge

North American Van Lines, Inc. (North American Benevolent Assoc., Local 1), Fort Wayne, Ind. 27 June. 25-CA-16614-2; JD-180-86, Richard H. Beddow, Jr., Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Ozark Drinking Water Co. (23-RC-5302), Houston, Tex. 27 June. All route sales trainees, route sales solicitors, route sales assigned and unassigned, truck drivers, field service technicians, cooler reconditioning employees, production employees, loadercheckers, and mechanics shall vote for representation by Teamsters Local 968, or for no representation.

Busk Brothers Furniture (25-RC-8303), Indianapolis, Ind. 24 June. Full-time and regular part-time drivers, helpers, warehousemen and furniture repairmen shall vote for representation by Teamsters Local 364, or for no representation.

Murmac Marketing Group, LTD. (22-RC-9629), Hamilton Township, N.J. 27 June. Production and maintainance employees shall vote for representation by Electrical Workers Local 1408, (IBEW), or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

V-2025

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

7 - 11 JULY 1986 (W-2025)

CASES SUMMARIZED

Advertiser's Mfg. Co.	Ripon, Wis.	11
Airport Distributors, Inc.	Romulus, Mich.	12
American Press, Inc.	Detroit, Mich.	6
American Stevedoring Co.	Orlando, Fla.	4
Aquabrom, Division of Great Lakes Chemical Corp., as successor to Bromine Division, Drug Research, Inc.; Tesco Chemicals, Inc.	Adrian, Mich.	12
Architectural Woodwork Corp.	Houston, Tex.	3
Associated General Contractors of Calif.; Teamsters Committee of Northern Calif.; and several Teamsters locals	San Francisco, Calif.	1
Boland Marine and Mfg. Co., Inc.	New Orleans, La.	2
Croley Coal Corp. and South Harlan Coal Co.	Harlan, Ky.	5
Delano Hotel	Miami Beach, Fla.	9
Electrical Workers (IBEW) Local 1547 (Alaska Chapter, National Electrical Contractors Assoc., Inc.)	Fairbanks, Alaska	9
Flex Products, Inc.	Mt. Eaton, O.	4
Gibbs & Cox, Inc.	Arlington, Va.	7
Goren Printing Co., Inc.	Boston, Mass.	1

LR1.15/2:

Horizon Foods, Inc.	Chicago, Ill.	10
Little Mining, Inc.	Wheelwright, Ky.	10
Rite Style Fashions	Red Bank, N.J.	5
Sea-Land Service, Inc. (Sea Operations)	New Orleans, La.	6
Teamsters Local 282 (General Contractors Assoc. of N.Y., Inc.)	Brooklyn, N.Y.	8
Teamsters Local 896 (Anheuser-Busch, Inc.)	Fairfield, Calif.	3
Theatrical Stage Employees Local 41 (Atlanta Ballet)	Atlanta, Ga.	2
Warrenton Rubber	Warrenton, Ga.	11
Williamson Piggly Wiggly, Inc.	Pikeville, Ky.	13

OTHER CONTENTS

List of Decisions of Administrative Law Judges 14

General Counsel Memo: Adjusting the Board's Interest Rate to 9 percent

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents U.S. Government Printing Office
Washington D.C. 20402

Associated General Contractors of California; Teamsters Committee of Northern Calif.; and several Teamsters locals (20--CE--149; 280 NLRB No. 82) San Francisco, Calif. 24 June. The Board concluded that the AGC and Teamsters violated Section 8(e) of the Act by entering into contract provisions requiring employer members of the AGC to cease business with dump truck owner-operators who do not become union members and employee-drivers subject to terms of a master labor agreement.

The disputed contract provisions on their face apply to work done both on and off the jobsite and therefore, concluded the Board, the provisions do not fall within the protection of the construction industry proviso of Section 8(e).

The threshold question the Board decided was that the dump truck owner-operators are independent contractors, not employees as urged by the unions. The Board also rejected the union argument that the contract provisions are lawful even as applied to independent contractors because they serve a valid work preservation purpose in the interest of bargaining unit employees.

As to remedy, Members Dennis and Babson declined to issue a reimbursement order, but Chairman Dotson said he would order the respondents to reimburse any owner-operator for fees or dues paid as a result of coercive enforcement of the unlawful secondary contract provisions.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by California Dump Truck Owners and Associated Independent Owner-Operators, Inc.; complaint alleged violations of the Act's Section 8(e). Case transferred directly to the Board.

* * *

Goren Printing Co., Inc. (1--CA--22446, 22805; 280 NLRB No. 64) Boston, Mass. 26 June. The Board ordered the employer to execute the collective-bargaining agreement reached 15 August 1984 with Graphic Communications Local 600, giving retroactive effect to its terms.

The Board found merit to General Counsel exceptions to an administrative law judge's reinstatement of a settlement agreement in Case 1-CA-22446, concluding that the employer had breached the terms of that settlement and therefore the settlement should be set aside.

The judge's failure to set aside the settlement was based on his view that it would be counterproductive because it would also require setting aside a labor agreement the parties signed in January 1985 as a condition of the settlement.

The Board noted that the parties had reached terms of a new labor agreement on 15 August 1984, which contract terms were contained in the 1985 labor agreement as well. Thus, the Board concluded, setting aside the settlement does not change terms of the collective bargaining agreement and it would

conform to the Board's longstanding policy of setting aside a settlement where, as here, there has been a clear breach of its terms.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Boston Local 600, Graphic Communications International Union; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Boston on 21 and 22 January 1985. Adm. Law Judge Martin J. Linsky's decision issued 10 February 1986.

* * *

Boland Marine and Manufacturing Co., Inc. (15--CA--5874, 6099; 280 NLRB No. 51) New Orleans, La. 20 June. In this backpay matter, the Board concluded that an administrative law judge had erred in his allocation of the burden of showing that claimants were discharged "solely as a result of the unilateral promulgation" of employer disciplinary rules.

The case stemmed from a 1976 Board decision, 225 NLRB No. 24, that the employer had violated the Act by unilaterally promulgating safety rules and rules governing employee conduct and instituting a disciplinary system to enforce such rules. The remedial order provided for reinstatement and backpay to employees discharged, suspended or otherwise denied work "solely as a result of the unilateral promulgation" of the rules.

In this supplemental decision, the Board found that "the judge gave insufficient consideration to the presumption in favor of claimants' entitlement to backpay and, accordingly, placed on the General Counsel an undue burden of demonstrating the absence of any facts which would show that the Respondent's actions with regard to a particular claimant were consistent with past practice."

The Board concluded "that the General Counsel was required only to demonstrate that a claimant was discharged pursuant to the unilaterally promulgated rules. If that was shown, the burden shifted to the Respondent to demonstrate that prior to July 1975 its supervisors discharged or disciplined employees for similar conduct. The General Counsel may rebut such a showing by a variety of means, including that the Respondent had been inconsistent in the implementation of its disciplinary practices."

(Members Dennis, Johansen and Stephens participated.)

Charges filed by Boilermakers Local 37; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at New Orleans, 1-4, and 15-18 October 1979. Adm. Law Judge Henry L. Jalette's decision issued 5 June 1981.

* * *

Theatrical Stage Employees Local 41 (Atlanta Ballet) (10--CB--4665; 280 NLRB No. 65) Atlanta, Ga. 26 June. The Board sustained an administrative law judge decision that the union violated the Act by causing the discharge of Lewis Parham

on 1 November 1985 and by thereafter refusing to refer Parham for work with the Atlanta Ballet.

The union conduct with regard to Parham was in violation of its duty of fair representation in running an exclusive hiring hall, the judge said.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Individual; complaint alleged violation of Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Atlanta on 28 February 1986. Adm. Law Judge J. Pargen Robertson's decision issued 8 April 1986.

* * *

Teamsters Local 896 (Anheuser-Busch, Inc.) (20--CB--6220; 280 NLRB No. 76) Fairfield, Calif. 23 June. Affirming the decision of an administrative law judge, the Board decided that the union breached its duty of fair representation by processing the grievance of Bonita Ilene Crow-Fisher in a perfunctory and arbitrary manner, by failing to provide Fisher pertinent information and by misinforming her about contractual provisions and other relevant facts.

The judge remarked that the union had acted in bad faith toward Fisher, who was "disadvantaged by the willful misstatements and misrepresentations of her assumed 'advocate.'"

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at San Francisco, on 14, 15, 16, 19 and 20 November 1984. Adm. Law Judge Joan Wieder's decision issued 11 June 1985.

* * *

Architectural Woodwork Corp. (23--CA--9925; 280 NLRB No. 108) Houston Tex. 24 June. The Board ruled an employer's doubt of the majority status of Carpenters Local 724 was invalid because it arose in the context of unfair labor practices and that the subsequent employer unilateral change in overtime policies violated the Act.

The employer also was found to have unlawfully encouraged and solicited employees to decertify the union. In this regard the Board particularly noted that the employer's entreaty to employees, in the wake of the Board dismissal of an employer RM petition, that it was up to workers to file a decertification petition, followed closely on the heels of other remarks that it was losing millions of dollars in contracts to outside shops that were nonunion, that it would not bargain with the union, and that some employees' wages would be reduced.

(Members Dennis, Babson and Stephens participated.)

Charges filed by Carpenters Local 724; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Houston, on 24 October 1985. Adm. Law Judge Hutton S. Brandon's decision issued 11 December 1985.

* * *

Flex Products, Inc. (8--RC--13190; 280 NLRB No. 61) Mt. Eaton, O. 26 June. The Board certified that a majority of valid ballots had not been cast for representation by Ironworkers Local 662, after rejecting the argument that company president Glenn Burket's meeting with individual employees prior to the election was objectionable conduct under NVF Co., 210 NLRB 663 (1974).

NVF holds that when an employer during an election campaign calls employees, individually or in small groups, into a private area removed from their normal work place and urges them to reject the union, such actions may constitute objectionable conduct depending on the size of the groups interviewed, the locus of the interview, the position of the interviewer in the employer's hierarchy, and the tenor of the speaker's remarks.

Applying the factors articulated in NVF, the Board found that, although the employees were interviewed individually, there was no evidence that the employees were being singled out for special pressure, the factor which was of concern in NVF. To the contrary, Burket told each employee that he was speaking to the employees individually because he thought that shy individuals may be unwilling to present questions in a group. Moreover, the Board noted, the employees were aware that Burket was meeting individually with virtually every employee present at the plant. Although the locus of the interview was the plant manager's office, there was evidence that the employees had been in the plant manager's office on prior occasions to meet with Burket or for other reasons, and that they were familiar with it.

The Board also pointed to the noncoercive and temperate tenor of Burket's remarks to the employees.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

American Stevedoring Co. (12--CA--9346; 280 NLRB No. 88) Orlando, Fla. 24 June. The Board held that the employer continued the same employing industry formerly operated by Metropolitan Contract Services, Inc. and that it was the successor to Metro with respect to the latter's bargaining obligation toward Teamsters Local 385.

The Board made the findings of successorship and bargaining violation despite the fact that of the initial employer work force of 21, only 9 employees from the Metro bargaining unit applied for jobs and none were accepted.

The record reflected that the employer specifically refused to hire any unit employees because they were represented by the union. Moreover, the employer in seeking applicants through newspaper ads concealed its identity, and failed to inform Metro workers that it was hiring employees to perform their former jobs. Absent such misconduct, the Board concluded, there is no reason to believe that there would not have been a substantial union majority in the new complement of employees.

In these circumstances, any uncertainty about union majority must be resolved against the employer who unlawfully created it, the Board ruled.

(Members Dennis, Johansen and Stephens participated.)

Charges filed by Teamsters Local 385; complaint alleged violation of Act's Section 8(a)(1) and 8(a)(3). Hearing at Orlando, on 9 and 10 March 1981. Adm. Law Judge George Norman's decision issued 22 October 1981.

* * *

Croley Coal Corp. and South Harlan Coal Co. (9--CA--16942, 16998; 280 NLRB No. 104) Harlan, Ky. 24 June. The Board concluded that South Harlan Coal is a successor to Croley Coal with knowledge of its predecessor's unfair labor practices and has the consequent responsibility to rectify the illegal conduct of the predecessor. The General Counsel met its burden of establishing substantial continuity in the employing enterprise despite transfer of the business to a new employer. South Harlan continued to operate the mine formerly owned by Croley in "basically an unchanged form" after South Harlan assumed control, an administrative law judge found. South Harland did not dispute the backpay computation due various discriminatees, but it did deny its liability as a successor of Croley Coal.

(Members Dennis, Johansen and Stephens participated.)

Hearing at Lexington, 20 September 1984. Adm. Law Judge Richard H. Beddow, Jr.'s decision issued 11 April 1985.

* * *

Rite Style Fashions (22--CA--11612; 280 NLRB No. 72) Red Bank, NJ. 30 June. The Board concluded that the employer violated the Act by unilaterally ceasing contributions to the Health and Welfare Fund of Joint Board of Coat, Suit and Allied Garment Workers; the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, by repudiating its agreement with Garment Workers Local 130, and by dealing directly with employees.

The violation findings were made on summary judgment, the employer having failed to file an answer to the complaint. The only employer response was a letter indicating it had filed a Chapter 11 bankruptcy reorganization petition.

The Board took note however that the employer's financial condition did not constitute good cause for its failure to file a timely answer within the meaning of NLRB rules and regulations.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by International Ladies' Garment Workers Local 130; complaint alleged violation of the Act's Section 8(a)(5), (3), and (1). General Counsel's motion for summary judgment filed 22 December 1982.

* * *

American Press, Inc. (7--CA--23186, 23201; 280 NLRB No. 109) Detroit, Mich. 27 June. The Board concluded that the employer committed several violations in connection with its succession to Rite-Way Press, Inc. in the operation of a printing business in Detroit.

The employer committed bargaining violations by disavowing its bargaining obligations to Graphic Communications Local 289 and by departing from preexisting rates of pay and benefits without prior notice to and bargaining with the union.

It further violated the Act by discriminatorily refusing to hire seven former Rite-Way employees. But for the unlawful conduct, the Board ruled, the majority of the employer work force would have been composed of employees of the predecessor. Still another violation was telling employees they would not be hired because of their union affiliation.

(Members Dennis, Johansen and Babson participated.)

Charges filed by Individual; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Detroit, on various days between 4 September and 25 October 1985. Adm. Law Judge Walter J. Alprin's decision issued 18 April 1985.

* * *

Sea-Land Service, Inc. (Sea Operations) (22--CA--13109; 280 NLRB No. 84) New Orleans, La. 24 June. Members Dennis and Babson concluded that the employer unlawfully terminated Harry Dunleavy, the radio electronics officer aboard the cargo ship SS San Pedro responsible for transmitting all communications from the ship, for refusing to answer questions about why he wanted to contact the NLRB regional office.

Dissenting Chairman Dotson would find that Dunleavy's discharge was lawfully motivated by his failing to obey the ship captain's direct orders to answer questions concerning an unauthorized radio call from the ship.

The panel majority concluded that although the ship captain was justified in asking Dunleavy whether the ship's communications equipment had been used in an unauthorized manner, his repeated question regarding "what prompted" Dunleavy to seek the Board's telephone number violated the Act.

Thus, while the interrogation of Dunleavy may also have contained lawful questions regarding possible unauthorized use of the ship's radio equipment, the employer drew no distinction between the specific questions asked, the majority said. In these circumstances, the employer's lawful motive for discharging Dunleavy could not be separated from its unlawful motive, Members Dennis and Babson said in finding the discharge unlawful.

Chairman Dotson found that the questioning of Dunleavy was prompted not by the context of the radio message but rather by Dunleavy's unauthorized use of the radio. In his view, the employer would have discharged Dunleavy even if it had not asked why he called the NLRB regional office.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Individual; complaint alleged violation of the Act's Section 8(a)(1) and (4). Hearing at Newark, 24 and 25 September 1984. Adm. Law Judge Edwin H. Bennett's decision issued 26 March 1985.

***

Gibbs & Cox, Inc. (2--CA--17515, 17588; 280 NLRB No. 110) Arlington, Va. 24 June. The Board by 3-2 vote held in agreement with an administrative law judge that the employer violated the Act by withdrawing recognition from Marine Technicians Guild as to the Arlington, Virginia, segment of the contractual bargaining unit, by insisting to impasse that the bargaining unit exclude the Arlington employees, and by unilaterally granting wage increases and other benefits to Arlington workers.

The union was first certified in 1946 as representative of technical employees at the firm's New York location, then its sole facility. In 1976, the Arlington office opened, and the employer voluntarily recognized the union there based on a demonstration of majority support and supplied the then governing labor agreement to Arlington employees.

From 1976 and at all times thereafter, the intent of the parties was to include both Arlington and New York employees in one overall bargaining unit, the judge found.

Members Johansen and Babson, who with Member Stephens formed the majority, affirmed the judge's application of the Board "merger doctrine" under which the Board determines whether the parties have agreed to merge separately certified or recognized units into one overall unit. The majority then held "the expressed disgruntlement of 18 employees in a bargaining unit of 217 provides the respondent with insufficient objective considerations for doubting the Union's continuing majority status."

Member Stephens did not regard this as a case of unit merger, but he did agree with both the result and basic analysis of his colleagues in the majority.

In dissent, Chairman Dotson and Member Dennis remarked that their "colleagues seek but one goal in this case: stable bargaining relationships," a

goal which the minority said should be accommodated with employee free choice. Chairman Dotson and Member Dennis said that "any unit that was appropriate for the purpose of selecting a bargaining representative remains appropriate for the purpose of rejecting that representative or obtaining a new one." In this case, they said, the Arlington employees constituted an appropriate unit in 1976 when recognition was extended, and that unit remained appropriate in 1980 when collective representation was no longer desired and recognition was withdrawn. They would dismiss the complaint.

Commenting on the position of the dissenters, the majority said that their approach "is impractical from the perspective of promoting industrial stability." The majority further stated that "we are not indifferent to the rights of employees in a single location to avoid being swept, against their will, into a union-represented multilocation unit."

(Full Board participated.)

Charges filed by Marine Technicians Guild; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at New York, on 13, 14, 15, 20, 21 and 26 October 1981. Adm. Law Judge Raymond P. Green's decision isssued 29 January 1982.

* * *

Teamsters Local 282 (The General Contractors Association of New York, Inc.) (29--CB--4648; 280 NLRB No. 86) Brooklyn, N.Y. 24 June. The Board dismissed an allegation that the union illegally refused to refer union dissidents Ted Katsaros and Walter Kudla to employment as working teamster foremen with employers with which the union has collective bargaining agreements.

The Board first determined that working teamster foremen-- who handle grievances at the jobsite pertaining to Teamsters and who are responsible for safety and contract administration-- are the equivalent of shop stewards, and that the union could therefore legitimately consider loyalty a criterion in selecting candidates for WTF positions.

In dismissing, the Board cited the union assertion that neither alleged discriminatee met the personal qualifications of loyalty established by the union, as well as the lack of probative evidence that the union applied this loyalty standard in an arbitrary or invidious fashion.

The Board did find a violation, however, in the union refusal to provide Katsaros and Kudla with job referral information they had requested.

(Chairman Dotson and Members Dennis and Babson participated.)

Charges filed by Individual; complaint alleged violation of Act's Section 8(b)(1)(A) and (2). Hearing at Brooklyn, on 21 and 25 May 1984, and at New York, on 10 July 1984. Adm. Law Judge Thomas T. Trunkes' decision issued 31 December 1984.

Electrical Workers (IBEW) Local 1547 (Alaska Chapter, National Electrical Contractors Assoc., Inc.) (19--CB--5432; 280 NLRB No. 97) Fairbanks, Alaska, 24 June. As recommended by an administrative law judge, Members Dennis and Johansen dismissed allegations that the union discouraged non-member travelers from availing themselves of the union referral system and condoned verbal threats against travelers, in violation of the Act. Chairman Dotson would find violations in both respects.

The majority found that union officer Merrill Hakala was expressing only his personal opinion when he linked jobs and travelers at a 5 February 1985 general union meeting; that emotional antitraveler statements at a March 1985 union meeting were made by rank-and-file members; and that there was "no credible evidence that the Respondent invited those remarks, encouraged them, or endorsed spreading fear among travelers."

Hakala's antitraveler statements at the February 1985 meeting set the stage for a virulent attack on travelers at the March meeting, Chairman Dotson said. Having openly declared his sentiments, Hakala's silence at the second meeting "can only be viewed as an endorsement of the members' later threats," the Chairman added. He also took note that "the Respondent has a long history of threatening and discriminating against travelers."

(Chairman Dotson and Members Dennis and Johansen participated.)

Charges filed by Individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Fairbanks, on 27 June 1985. Adm. Law Judge David G. Heilbrun's decision issued 4 September 1985.

* * *

Bauba Corp. d/b/a Delano Hotel (12--CA--9297; 280 NLRB No. 85) Miami Beach, Fla. 30 June. In view of the employer's failure to file an answer to the backpay specification, the Board found the allegations in the backpay specification to be admitted as true, and it granted the General Counsel's motion for default summary judgment.

The proceeding stemmed from the U.S. Court of Appeals for the Eleventh Circuit's enforcement of a 1982 Board order directing the employer, among other things, to give retroactive effect to the terms of its agreement with Hotel and Restaurant Employees Local 355.

(Members Johansen, Babson and Stephen's participated.)

Charges filed by Hotel and Restaurant Employees Local 355. The General Counsel filed a motion for summary judgment on 21 April 1986.

* * *

Little Mining, Inc. (9--CA--22351; 22466; 280 NLRB No. 73) Wheelwright, Ky. 30 June. The Board, with Chairman Dotson dissenting in part, found that the employer violated the Act by failing to pay employees the minimum daily wages required under its contract with United Mine Workers District 30, by failing to maintain and pay "premiums" required under the agreement, and by discriminatorily refusing to recall Mike Tackett because of his union activities. The findings were made on motion for summary judgment.

For reasons set forth in his dissent in Rapid Fur Dressing, 278 NLRB No. 126, Chairman Dotson would deny those portions of the motion for summary judgment relating to unilateral changes; he concurred in all other respects in the grant of summary judgment.

The unilateral changes, Chairman Dotson said, constitute "nothing more than an attempt to have the Board enforce the contract and collect any delinquent wages and benefit fund payments." In his view, the Board should intervene in contract compliance cases only when there is "substantial repudiation" of a party's contractual and bargaining obligation.

Taking issue with the dissent, Members Johansen and Babson commented that the Board has long held that unilateral repudiation of essential employment conditions constitutes violations that go to the core of the collective-bargaining relationship. Also, they disagreed with the Chairman's suggestion that the Board case backlog is compelling justification for dismissing such complaints.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Mine Workers District 30; complaint alleged violation of Act's Section 8(a)(5) and (1), and 8(a)(3) and (1). General Counsel filed a motion for summary judgment on 13 January 1986.

* * *

Horizon Foods, Inc. (13--CA--24710, et al.; 280 NLRB No. 127) Chicago, Ill. 30 June. The employer committed several unfair labor practices in connection with a 1984 organizational drive of Food and Commercial Workers Local 1550 among employees at the company's three Chicago retail food stores, the Board found in agreement with an administrative law judge.

Unlike the judge who recommended a narrow cease-and-desist order, the Board concluded that the employer misconduct was egregious enough to warrant issuing a broad cease-and-desist order. The Board also set aside an election held 10 January 1985 and directed a second election.

Among other violations the employer discriminatorily terminated four employees because of their union activities and coercively interrogated and threatened workers.

Members Johansen, Babson and Stephens participated.)

Charges filed by Commercial Workers Local 1550; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Chicago, on 28, 29 and 30 October 1985. Adm. Law Judge Frank H. Itkin's decision issued 26 February 1986.

* * *

Warrenton Rubber (10--CA--21377; 280 NLRB No. 75) Warrenton, Ga. 30 June. Finding the employer raised no issue properly litigable in this unfair labor practice proceeding, the Board granted summary judgment, found the employer illegally refused to bargain with General Teamsters Local 528 and issued cease-and-desist and bargaining orders.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 528; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel filed a motion for summary judgment on 3 February 1986.

* * *

Advertiser's Manufacturing Co. (30--CA--6105 et al.; 280 NLRB No. 128) Ripon, Wis. 30 June. The Board agreed with an administrative law judge that the employer's discharge of supervisor Carol Hahn because of the union activities of her employee son violated the Act.

To the extent that the judge relied on the "overall pattern of conduct" rationale for finding an 8(a)(1) violation for Carol Hahn's discharge, the Board disavowed that rationale for reasons stated in Parker-Robb Chevrolet, 262 NLRB 402 (1982).

In Parker-Robb, issued subsequent to the judge's decision, the Board expressly overruled the so-called "integral part" or "pattern of conduct" line of precedent.

"The impact of Carol Hahn's discharge on her employee son's union activities, magnified by other unlawful acts directed by the Respondent against Ronald Hahn, compels that he be protected by finding a violation and by ordering reinstatement and backpay for his mother," the Board held.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 126; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Green Lake, Wis., on 18 through 22 May and 15 through 19 June 1981. Adm. Law Judge Richard A. Scully's decision issued 29 December 1981.

* * *

Aquabrom, Division of Great Lakes Chemical Corp., as successor to Bromine Division, Drug Research, Inc.; Tesco Chemicals, Inc. (7--CA--13320, 13487; 280 NLRB No. 66) Adrian, Mich. 30 June. On remand from the U.S. Court of Appeals for the Sixth Circuit, the Board found that Aquabrom is a successor to Bromine and therefore that it is under a duty to recognize and bargain with the United Auto Workers as the certified representative of its production and maintenance employees.

In accordance with the court remand, the Board said this decision may be filed with the Sixth Circuit.

This case was before the Board on court remand which directed that the issue of whether Great Lakes Chemical (Aquabrom or Great Lakes) is a successor to Drug Research (Bromine) is to be determined in the first instance by the Board and not by the court upon recommendations which had been made by its Special Master. The court remand was solely to obtain from the Board a determination of this issue.

Aquabrom in 1977 had purchased the assets of Bromine and had taken over the operation and management of the business. The Board found "substantial continuity in the employing enterprise" and thus that Aquabrom is a successor to Bromine.

(Members Johansen, Babson and Stephens participated.)

* * *

Airport Distributors, Inc. (7--CA--24297, 24297(2); 280 NLRB No. 91) Romulus, Mich. 30 June. The employer unlawfully refused to bargain with Teamsters Local 299 and unilaterally subcontracted in February 1985 bargaining unit work and refused to recall to work from layoff unit employees in retaliation for their support of the union and in breach of its bargaining obligation under Section 8(d) of the Act.

Those unfair labor practice findings were made by an administrative law judge and here affirmed by the Board.

The employer further violated the Act, it was found, by changing the seniority date of one employee in retaliation for his union activity, by issuing a written warning to a second worker in reprisal, and by discharging a third employee in punishment for his union activity.

The employer also illegally interrogated and threatened employees, created an impression of surveillance of union activity, and promised a wage increase to discourage union activity.

Charges filed by Individual, and Teamsters Local 299; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Detroit, on 22-24 July 1985. Adm. Law Judge Thomas R. Wilks' decision issued 19 December 1985.

* * *

Williamson Piggly Wiggly, Inc. (9--CA--21015--1,--2, et al.; 280 NLRB No. 125) Pikeville, Ky. 30 June. The Board decided in agreement with an administrative law judge decision that the employer committed various illegal acts of discrimination and coercion of employees during a 1984 organizational effort by Food and Commercial Workers Local 347 among about 90 employees at the company's supermarket in Pikeville.

The union drive began in June 1984 and ended in December 1984, when a Board-supervised election was held. The union lost the election by a vote of 55 to 27, with 8 ballots being challenged. Since the union could not show that it ever had majority support among unit employees, a bargaining order is neither appropriate nor is one sought by the General Counsel, the judge noted.

The acts of discrimination consisted of the illegal discharge of Johnny Lucas and the reprimand and later discharge of Shelia Bevins.

The employer also coercively interrogated and threatened workers, created an impression that their union activites were under surveillance, and ordered an employee to take down pro-union posters at places removed from the work site.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Local 347, United Food and Commercial Workers Union; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Pikeville, on 18, 19, 10, 21, and 22 March 1985, 15, 16, 17, 18, 19, 29, and 30 April 1985, and 1, 2, and 3 May 1985. Adm. Law Judge Martin J. Linsky's decision issued 23 December 1985.

***

DECISIONS OF ADMINISTRATIVE LAW JUDGES

North Slope Mechanical and B.T. Mancini Co., Inc. (Individual), Prudhoe Bay, Alaska, 30 June. 28--CA--7294; JD(SF)-71--86, Richard J. Boyce, Adm. Law Judge

Valley Parcel Service, Inc. (Teamsters Local 87, 150 and 431), Sacramento and Fresno, Calif. 30 June. 20--CA--19331, et. al.; JD(SF)--74-86, David G. Heilbrun, Adm. Law Judge

EDP Medical Computer Systems Inc., Consumers Subscription Center Inc., and Consumers Subscription Service Inc. (Commercial Workers Local 888, et al.), Jamaica, N.Y. 8 July. 29-CA-11726, et al.; JD(NY)--53--86, Steven B. Fish, Adm. Law Judge

U.S. Postal Service (Letter Carriers, Branch 1650), Venice, Calif. 30 June. 31--CA--15593(P); JD(SF)--76--86, William L. Schmidt, Adm. Law Judge

Knoll Furniture (Steelworkers Local 3), San Francisco, Calif. 30 June. 20--CA--20050; JD(SF)--75--86, Earldean V.S. Robbins, Adm. Law Judge

American Broadcasting Co., et al. (Writers Guild of America, West, Inc.), Los Angeles, Calif. 1 July. 31--CA--15121; JD(SF)--73--86, Earldean V.S. Robbins, Adm. Law Judge

Hoyt Water Heater Company (Engineers Local 39), Oakland, Calif. 1 July. 32--CA--7554; JD(SF)--72--86, Joan Wieder, Adm. Law Judge

* * *

OFFICE OF THE GENERAL COUNSEL
Division of Operations Management

MEMORANDUM GC 86-7 8 July 1986

TO : All Regional Directors, Officers-in-Charge, and Resident Officers

FROM : Joseph E. DeSio, Associate General Counsel

SUBJECT: Adjusting the Board's Interest Rate to 9 Percent

In Florida Steel Corporation, 231 NLRB 651 (1977), the Board ordered that interest on backpay and other monetary awards be computed at the "adjusted prime rate" used by the United States Internal Revenue Service in calculating interest on the underpayment or overpayment of taxes. 1/

Consistent with that decision, this is to advise you that the interest rate for the period 1 July 1986, to 31 December 1986, is 9 percent.

The following chart updates and summarizes the interest rates to be applied to backpay and other monetary remedies accruing during various periods of time:

Prior to 1 July 1975	6 percent
1 July 1975 to 31 December 1977	7 percent
1 January 1978 to 31 December 1979	6 percent
1 January 1980 to 31 December 1981	12 percent
1 January 1982 to 31 December 1982	20 percent
1 January 1983 to 30 June 1983	16 percent
1 July 1983 to 31 December 1983	11 percent
1 January 1984 to 31 December 1984	11 percent
1 July 1984 to 31 December 1984	11 percent
1 January 1985 to 30 June 1985	13 percent
1 July 1985 to 31 December 1985	11 percent
1 January 1986 to 30 June 1986	10 percent
1 July 1986 to 31 December 1986	9 percent

J. E. D.

cc: NLRBU

1/ See also Olympic Medical Corporation, 250 NLRB 146 (1980), where the Board adhered to the interest rate formula set forth in Florida Steel.

Distribution:
Washington - Special
Regional - All Professional Employees
Release to the public

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2026

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

14 - 18 JULY 1986 (W-2026)

NEWARK PUBLIC LIBRARY
AUG 7 1986
U. S. GOVT. PUBS.
DEPOSITORY 326

CASES SUMMARIZED

Americare Convalescent Center	Detroit, Mich.	1
Bay Breeze Industries, Inc. d/b/a Lloyd Flanders	Menominee, Mich.	1
Supershade Corporation	Perth Amboy, N.J.	1

OTHER CONTENTS

List of Directions of Elections by Regional Director 3

List of Decisions of Administrative Law Judges 3

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C., 20570, using the request form at the end of this issue of the Weekly Summary.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

LR 1.15/2:

Americare Convalescent Center (7--CA--24086; 280 NLRB No. 130) Detroit, Mich. 15 July. Affirming the administrative law judge, the Board found that the employer unlawfully attempted to discourage support for the union in an upcoming Board election by soliciting employee grievances, promising employees benefits, threatening employees with reprisals, telling employees that selecting the union as their representative would be futile, and discharging half of the unit.

A few weeks before the scheduled election, the employer's general manager told employees that they were all one "family" and that they did not need outsiders to solve their problems. If outsiders came in communications would break down and employees would not be given bonuses, she said. Additionally, during the same period one of the employer's coordinators, whom the Board found to be an agent, told employees that the general manager had told him that she would make it "tough" for them and see that no union came in; that she would not allow a union to tell her what she could do; and that if he (the coordinator) did not vote against the union his job would be in jeopardy. Finally, two days before the election the general manager discharged 12 of the 21 unit employees. The union subsequently won the election by a vote of 6 to 1 and was certified.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Health Care Employees, District 1199M; complaint alleged violations of Act's Section 8(a)(1) and (3). Hearing at Detroit, on 13-15 May 1985. Adm. Law Judge Walter J. Alprin's decision issued 17 April 1986.

* * *

Supershade Corporation (22--CA--13029(E); 280 NLRB No. 131) Perth Amboy, N.J. 17 July. In a supplemental decision affirming an administrative law judge's recommended order, the Board denied the employer's application for an award of attorneys' fees under the Equal Access to Justice Act after concluding the General Counsel's position in the underlying unfair labor practice hearing was substantially justified.

The case involved a discharged employee who the judge found and the Board agreed had been engaged in protected concerted activity by discussing with other employees her dissatisfaction with the union, and becoming involved with a petition signed by other employees memorializing their dissatisfaction.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual; Adm. Law Judge Steven B. Fish's supplemental decision issued 27 December 1985.

* * *

Bay Breeze Industries, Inc. d/b/a Lloyd Flanders (30--CA--7740; 280 NLRB No. 133) Menominee, Mich. 18 July. The Board adopted the holding of an administrative law judge that Bay Breeze Industries, Inc. was a successor corporation to the Heywood-Wakefield Co. and violated the Act by refusing to bargain with the United Auto Workers.

In March 1982, Heywood-Wakefield was forced to seek reorganization under Chapter 11 of the Bankruptcy Code. In December 1982, the newly-formed Bay Breeze Industries purchased Heywood-Wakefield's operating assets and plant in Memoninee, Michigan. The production of outdoor furniture began the next month, January 1983. In April 1983, when Bay Breeze had reached an employee complement of 97, of which the union counted 78 as former bargaining unit employees of Heywood-Wakefield, the union requested recognition. Bay Breeze refused this request, claiming that it was not a successor to Heywood-Wakefield.

The Board concluded Bay Breeze was a successor after ascertaining that (1) it was a new employer; (2) it conducted essentially the same business as Heywood-Wakefield at the Menominee plant; (3) it hired former Heywood-Wakefield employees as a majority of its workforce; and (4) the union had been recognized as the representative of Heywood-Wakefield's employees since 1943. The Board cited the Ninth Circuit's 1984 decision in Premium Foods, Inc. v. NLRB and the Seventh Circuit's 1974 decision in Zim's Foodliner, Inc. v. NLRB.

(Members Johansen, Babson and Stephens participated.)

Charges filed by United Autoworkers Local 413; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing on 27 February through 17 May 1984. Adm. Law Judge Burton S. Kolko's decision issued 29 January 1985.

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Pie Piper Products Ltd., A Wholly Owned Subsidiary of Vienna Sausage Mfg. Co. (13-RC-16917), Bensenville, Illinois. 15 July. Production and maintenance, shipping and receiving employees shall vote for representation by Industrial Workers' Local 8, or for no representation.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Eastern Connecticut Health Services, Inc., d/b/a New London Convalescent Home (Health Care Employees Local 1199), Waterford, Conn. 30 June. 39--CA--2265; JD(NY)--49--86, Julius Cohn, Adm. Law Judge

Hall Industries, Ltd. (Electronic Workers (IUE) Local 330), Rochester, N.Y. 30 June. 3--CA--12815, 3--RD--862; JD(NY)--57--86, D. Barry Morris, Adm. Law Judge

D & D Development Co., Inc. d/b/a Anaheim Town and Country Inn (Hotel and Restaurant Employees Local 681), Los Angeles, Calif. 23 June. 21--CA--24273-2; JD(SF)--69--86, Richard D. Taplitz, Adm. Law Judge

Aim Distribution Systems (Individuals), Fullerton, Calif. 20 June. 21--CA--24226, et al; JD(SF)--68--86, Burton Litvack, Adm. Law Judge

Pacific Coast Metal Trades District Council (Lockheed Shipbuilding Company), Seattle, Wash. 20 June. 19--CB--5607; JD(SF)--67--86, Clifford H. Anderson, Adm. Law Judge

Caress Bake Shop, Inc. d/b/a Barkus Bakery (Bakery Workers Local 12), Allison Park, Pa. 16 July. 6-CA-18814; JD--191--86, Arline Pacht, Adm. Law Judge

Terpening Trucking Co. Inc. (Individual), Syracuse, N.Y. 16 July. 3-CA-11101, 3-CB-4081; JD(NY)--60--86, Raymond P. Green, Adm. Law Judge

Hotel and Restaurant Employees Local 19 (Le Baron Hotel, and individual), San Jose, Calif. 25 June. 32--CB--1669; 32--CB--1884; JD(SF)--70--86, David G. Heilbrun, Adm. Law Judge

Trinidad Corporation (Individual), Seattle, Wash. 16 June. 19--CB--5469; JD(SF)--66--86, David G. Heilbrun, Adm. Law Judge

Riverside Cement/A Gifford-Hill Co. (Individual), Oro Grande, Calif. 3 July. 31--CB--6152; JD(SF)--77--86, Gordon J. Myatt, Adm. Law Judge

John Dusenbery Co., Inc. (Teamsters Local 945), Randolph Township, N.J. 30 June. 22-CA-13889; JD(NY)--56--86, Robert T. Snyder, Adm. Law Judge

Gold Bond Building Products (Oil Workers Local 7-239), National City, Mich. 30 June. 7-CA-24775(7); JD-184-86, Russell M. King, Jr., Adm. Law Judge

Dubovsky & Sons, Inc., and Dubovsky Beer Distributors, Inc. (Individuals), Glendale, N.Y. 30 June. 29-CB-5581, 29-CB-5702, 29-CB-5664; JD(NY)--54--86, Steven Davis, Adm. Law Judge

Omnix International Corp. d/b/a Waterbed World (Union Independiente De Supermercados Y Tiendas Por Departamentos), Hato Rey, P.R. 23 June. 24--CA--5160, 24--RC--6985; JD--152--86, Elbert D. Gadsden, Adm. Law Judge

Kite Inc. (District Council No. 38 I.B.P.A.T.), Atlanta, Ga. 30 June. 10-CA-20612-2; JD(ATL)--47--86, J. Pargen Robertson, Adm. Law Judge

Maple Tree, Inc. (Ladies Garment Workers), Clanton, Ala. 30 June. 10-CA-20759; JD(ATL)--48--86, Philip P.McLeod, Adm. Law Judge

Burke-Parsons Bowlby and its Successor, General Wood Preservative Co. (Woodworkers of America), Leland, N.C. 30 June. 11-CA-11282, 11-CA-11376, 11-CA-11487; JD(ATL)--46--86, Lawrence W. Cullen, Adm. Law Judge

Pence Construction Corp. (Carpenters Local 1266 and Austin Chapter, Associated General Contractors of America), Austin, Tex. 30 June. 23-CA-10175; JD(ATL)--45--86, Lawrence Cullen, Adm. Law Judge

River Grain Elevators, Inc. and Cooper Stevedoring Co., Inc. (Teamsters Local 1158), Darrow, La. 30 June. 15-CA-8231, 15-CA-8276; JD--185--86, Irwin Kaplan, Adm. Law Judge

Logo 7, Inc. (Clothing and Textile Workers), Indianapolis, Ind. 30 June. 25-CA-17649; JD--183--86, Martin J. Linsky, Adm. Law Judge

Jimmy Metcalf, d/b/a Metcalf Excavating (Teamsters Local 164), Jackson, Mich. 30 June. 7-CA-22378; JD--186--86, Elbert D. Gadsden, Adm. Law Judge

United Furniture Workers of America, Local 36 (Telescope Folding Furniture Co.), Queensbury, and Albany, N.Y. 30 June. 3-CB-4800; JD(NY)--51--86, Joel P. Biblowitz, Adm. Law Judge

RBB Corp. t/a Adam Metal Products Co. (Individual), Ledgewood, N.Y. 10 July. 22--CA--13767, 22--CA--13960; JD(NY)--61--86, D. Barry Morris, Adm. Law Judge

Quality Rolls, Inc. (Machinists and Aerospace Workers Local 106), New Castle, Pa. 14 July. 6--CA--18541; JD--189--86, Joel A. Harmatz, Adm. Law Judge

Dresser Industries, Inc. (Individual), Stratford, Conn. 30 June. 39-CA-2804; JD(NY)--55--86, Steven Davis, Adm. Law Judge

Princeton Memorial Hospital Co., d/b/a Princeton Health Care Center (Hospital and Health Care Employers District 1199), Princeton, W.Va. 30 June. 9--RC--

14396, 9--CA--21252-1-2-4, 9-CA-21516-1-2; JD--187--86, Karl H. Buschmann, Adm. Law Judge

Southern Maryland Hospital Center (Office and Professional Employees Local 2), Clinton, Md. 16 July. 5--CA--17182, 5--CA--17343; JD--194--86, Norman Zankel, Adm. Law Judge

American Bank Note Company (Graphic Communications Local 51), New York, N.Y. 16 July. 2--CA--21486; JD(NY)--52--86, Adm. Law Judge

Memorial Hospital, Roxborough (Individual), Philadelphia, Pa. 15 July. 4-CA-14640; JD--19--86, Hubert E. Lott, Adm. Law Judge

Technodent Corp. d/b/a Dentech Corp. (Individuals), Sumas, Wash. 16 June. 19--CA--17646, et al.; JD(SF)--65--86, Roger B. Holmes, Adm. Law Judge

Canterbury Villa of Waterford, Inc. (Health Care Employees Union, District 1199, RWDSU), Waterford, Conn. 30 June. 39--CA--1797; JD(NY)--48--86, Julius Cohn, Adm. Law Judge

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2027

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

21 - 25 JULY 1986 (W-2027)

NEWARK PUBLIC LIBRARY

AUG 1 3 1986

U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

Plumbers Local 460 (McAuliffe Mechanical, Inc., et al.)	Bakersfield, Calif.	2
R. Waldo, Inc. and Congress of Independent Unions	High Ridge, Missouri	2
Sewell-Allen Big Star No. 52	Collierville, Tenn.	1
Teamsters Local 272	New York, N.Y.	1

OTHER CONTENTS

List of Directions of Elections by Regional Director	3
List of Decisions of Administrative Law Judges	3
Request Form for Decisions	

READEX FICHE best copy available

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

LR 1.15/2:

Sewell-Allen Big Star No. 52 (26--CA--11018; 280 NLRB No. 137), Collierville, Tenn. 23 July. Upholding the decision of an administrative law judge, the Board dismissed the complaint alleging that the employer was a successor to Whitney Chambers in the operation of a grocery store in Collierville and that it discriminatorily refused to hire four out of the five meat department workers employed by Chambers and represented by Food and Commercial Workers Local 1529 in order to avoid its successorship obligation to recognize the union.

The employer reasons for not hiring the four meat department employees of Chambers were nondiscriminatory, the judge found, and as a result the employer was held not obligated as a successor to recognize and bargain with the union.

Two of the four were not hired for reasons related to their poor performance while employed at Chambers, and the remaining two were not hired because they failed to take necessary and reasonable steps to express their interest in employment with the employer. The judge credited testimony that the employer would have hired the latter two if they had applied for work.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Food & Commercial Workers Local 1529; complaint alleged violation of Act's Section 8(a)(1), (3), and (5). Hearing at Memphis on 29 and 30 July and 17 and 18 September 1985. Adm. Law Judge Philip P. McLeod's decision issued 24 February 1986.

* * *

Teamsters Local 272 (2--CB--9495; 280 NLRB No. 138), New York, N.Y. 24 July. The Board, agreeing with the decision of an administrative law judge, concluded that the union violated the Act by failing from July to November 1982 to refer Ira Harrison for employment to available positions because he held a withdrawal card.

By such conduct, the judge remarked, the union was operating a system for referral of employees without any objective criteria or standards and in a discriminatory manner.

The judge found that Harris had been a member in good standing when he requested a withdrawal card in July 1982, that he was under no obligation to pay dues while he held a withdrawal card and that the union refused to refer him out of its exclusive hiring hall until Harris turned in the withdrawal card and paid dues for the period he held the card.

"Inasmuch as such refusal to refer was based solely on union considerations and nothing else, such action by the union was violative of its exclusive hiring hall arrangement which required it to refer employees on a nondiscriminatory basis," the judge wrote.

(Chairman Dotson and Members Johansen, Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at New York on 16 March 1983. Adm. Law Judge Arthur A. Herman's decision issued 27 June 1983.

* * *

R. Waldo, Inc. and Congress of Independent Unions (14--CA--17440, 14--CB--6189; 280 NLRB No. 135), High Ridge, Missouri. 23 July. Sustaining an administrative law judge unfair labor practice findings, the Board held that both the employer and the Congress of Independent Unions violated the Act when they signed a renewal contract containing union-shop provisions after the CIU lost its majority support and after the company and the CIU became aware of the loss of majority.

The employer and the CIU had negotiated over the telephone a 50-cent wage increase and signed a new agreement preserving benefits for three years, even though, the judge found, all bargaining unit employees had abandoned the CIU, had refused to participate in the negotiations and---except for one employee on vacation---had signed authorization cards for the charging party, Plumbers Local 562.

The employer in its brief contended that employee preference for Local 562 was not made known until that local had filed a representation petition, but the judge, in view of credited evidence to the contrary, rejected this and "other clearly unfounded defenses."

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Plumbers Local 562; complaint alleged violation of Act's Section 8(a)(1), (2), and (3), and Section 8(b)(1)(A) and (2). Hearing at St. Louis on 7 and 8 October 1985. Adm. Law Judge Marion C. Ladwig's decision issued 24 January 1986.

* * *

Plumbers Local 460 (McAuliffe Mechanical, Inc., et al.) (31--CB--6234, 6238, 6246; 280 NLRB No. 136), Bakersfield, Calif. 22 July. As recommended by an administrative law judge, the Board dismissed the complaint alleging that the union violated the Act by dispatching persons listed on its seniority lists without first offering the positions to others holding more senior positions on the lists.

The legality of two union dispatches were in issue---the dispatch of a welder for a one-day job on 2 May 1985 to McAuliffe Mechanical, Inc. in Palmdale, California, and the dispatch of a fitter to a 6 or 7-day job at the Almaden Refinery in McFarland, California.

The judge found no evidence of hostility, arbitrariness or union preference in the union dispatch of either welder Robert House or fitter Danny Threewit. He concluded that the union business agents in each instance reasonably believed they were acting in accord with the collective-bargaining agreement and valid rules of the union hiring hall.

Regarding the welder job, the judge determined that the union business agent had to act promptly if the union was to provide a welder at the McAuliffe job and that House, although number 29 on the dispatch list, was probably the only one who would be willing to fill the 1-day job, located 105 miles away.

As to the fitter job, the judge found that the union business agent, with limited time to process the dispatch request, reasonably concluded that there was probably noone ahead of Threewit who would take what was viewed as a "bad job."

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Bakersfield on 1 October 1985. Adm. Law Judge Harold A. Kennedy's decision issued 24 February 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

R.M. Eyre & Associates, Inc. (Carpenters Local 1281), Anchorage, Alaska. 17 July. 19--CA--18032; JD(SF)--79--86, Burton Litvack, Adm. Law Judge

Laborers Local 1136 (Southern Illinois Builders Association) (Individual), Mt. Vernon, Ill. 15 July. 14--CB--6273; JD--179--86, George F. McInerny, Adm. Law Judge

Safety & Security Systems, Inc. (Electrical Workers (IBEW) Local 113), Colorado Springs, Colorado. 21 July. 27--CA--9545; JD(SF)--85--86, Clifford H. Anderson, Adm. Law Judge

Westinghouse Broadcasting and Cable, Inc. (WBZ-TV) (Electrical Workers (IBEW) Local 1228), Boston, Mass. 24 July. 1-CA-21, 594; JD-193-86, Nancy M. Sherman, Adm. Law Judge

Hotel and Restaurant Employees Local 5 (Turtle Bay Hilton and Country Club), Kahuku, Hawaii. 14 July. 37--CB--635; JD(SF)--81--86, Richard D. Taplitz, Adm. Law Judge

Superior Forwarding Co., Inc., Debtor-in-Possession, and Central Transport, Inc. (Individuals), Little Rock, Ark., Sterling Heights, Missouri. 24 July. 26--CA--11196, 26-CA-11240; JD--201--86, Robert T. Wallace, Adm. Law Judge

Giant Food Stores, Inc. and Easton Development Co. (Food and Commercial Workers Local 1357), North Hampton, Penna. 17 July. 4--CA--15117; JD--198--86, Robert W. Leiner, Adm. Law Judge

Anchorage Times Publishing Co. (Laborers Local 341), Anchorage, Alaska. 18 July. 19--CA--17419, 19--RC--11172, George Christensen, Adm. Law Judge

Appalachian Power Co., John E. Amos Plant (Steelworkers Local 8621), Charleston, W. Va. 22 July. 9-CA-11951, 12192, 12235-2; JD-192-86, Wallace H. Nations, Adm. Law Judge

Five M Coal Corp. d/b/a Two M (Mine Workers District 30), Pikeville, Ky. 21 July. 9--CA--22737; JD--195--86, Frank H. Itkin, Adm. Law Judge

Gamber Roofing Co. (Allied Workers Local 96), Minneapolis, Minn. 23 July. 18-CA-9393; JD-174-86, William A. Gershuny, Adm. Law Judge

Quarto Mining Co., A Wholly Owned Subsidary of The North American Coal Co. (Mine Workers Local 1785), Clarington, O. 23 July. 9-CA-22943; JD--197--86, Bernard Ries, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Bowen Food Service, Inc. (3-RC-8916), Buffalo, N.Y. 18 July. Full-time and regular part-time food service employees, including waiters, waitresses, cooks, bakers, grill employees, crew chiefs, bus persons and dishwashers shall vote for representation by Hotel, Motel, Restaurant, Cafeteria and Hospital Employees Local 66, or for no representation.

Galaxie Plaza 400, Inc. d/b/a U.C. Millwork (3-RC-8917), Buffalo, N.Y. 17 July. Full-time and regular part-time carpenters, millman helpers and laminators shall vote for representation by Carpenters Local 370, or for no representation.

Monmouth Convalescent Center, Inc. (22-RC-9636), Newark, N.J. 17 July. Full-time and regular part-time licensed practical nurses and service and maintenance employees including all nurses aides, dietary employees, laundry aides and housekeeping employees shall vote for representation by 1115 Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2028

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

NEWARK PUBLIC LIBRARY

28 - 31 JULY 1986 (W-2028)

AUG 20 1986

U. S. GOVT. PUBS.
DEPOSITORY 376

CASES SUMMARIZED

American Bakeries Co. & Teamsters Local 51	Port Huron, Ypsilanti, Mich.	8
Antoine's of Beverly Hills	Beverly Hills, Calif.	2
Best Glass Co.	Las Vegas, Nev.	10
Electrical Workers Local 1547 (IBEW)	Homer, Alaska	8
Hall's Motor Transit Co.	W. Middlesex, Penna.	9
Ironworkers Local 433	Los Angeles, Calif.	7
Longshoremen's Local 1329	Providence, R.I.	4
Machinists Local 701	Chicago, Ill.	1
Mantha's Carpet and Draperies, et. al.	Watsonville, Calif.	4
Marko Contractors, Inc.	Parkersburg, W. Va.	6
Molded Accoustical Products, Inc.	Easton, Penna.	9
Plumbers Local 388	Lansing, Mich.	3
Quality Inn-LAX	Los Angeles, Calif.	1
Sanford Home for Adults and Local 6, Health Professionals, ILA	Flushing, N.Y.	5
Schaeff Namco, Inc.	Sioux City, Ia.	6
Shoppers Choice	Amherst, N. Tonowanda, N.Y.	2
Talawanda Springs, Inc.	College Corner, O.	6

LR1.15/2:

Taylor Made Office Systems, Inc.	Concord, Calif.	5
Teamsters Local 59	Boston, Mass.	9
The Union Oil Mill, Inc.	W. Monroe, La.	11
Wilco Business Forms, Inc.	Lansing, N.Y.	11

OTHER CONTENTS

List of Directions of Elections by Regional Director 13

List of Decisions of Administrative Law Judges 12

Notice of Publication: Volume 273 of NLRB Decisions and Orders

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Quality Inn-LAX (31--CA--15077; 280 NLRB No. 145), Los Angeles, Calif. 30 July. The Board dismissed the complaint alleging the employer illegally terminated Joseph Gonzalez, a cleaning employee of the hotel, because of his activities for Hotel Employees and Restaurant Employees Local 814.

The evidence was found insufficient to controvert testimony of the general manager that Gonzalez was discharged because of a report that the employee had smoked marijuana while on duty.

The Board decision was in agreement with an administrative law judge who concluded that although the General Counsel made out a "bare" prima facie case of discrimination against principal employee union organizer Gonzalez, the evidence established that the union adherent would have been discharged even in the absence of his union activity.

The judge rejected the contention that the hotel general manager had hired a new employee "to set up" Gonzalez and to fabricate an incident which would justify Gonzalez's discharge. He noted that the manager had promoted another employee after learning of her union activities, and that there was an absence of evidence that the employer had responded to the union organizational drive by engaging in other unlawful conduct. The judge also cited an employer rule prohibiting use of drugs and alcohol by employees on duty and evidence that employees in the past had been discharged for breaking this rule.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Hotel and Restaurant Employees Local 814; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Los Angeles on 21 and 22 November 1985. Adm. Law Judge Earldean V.S. Robbins' decision issued 2 May 1986.

* * *

Machinists Local 701 (13--CB--11076; 280 NLRB No. 149), Chicago, Ill. 31 July. Agreeing with an administrative law judge, the Board found the union violated the Act when it refused to execute a new labor agreement in September 1985 embodying terms and conditions that union negotiator Gene Staniszewski reached with Avis Rent A Car System, Inc.

The judge found that the union agent in charge of Local 701, Dean Kocina, had attempted to void Staniszewski's agreement with the employer because he disagreed with the negotiator's conduct in agreeing to a contract which employees had twice rejected in ratification votes.

Although the union argued that the document the employer submitted for signature was a draft subject to revision and contained additions, deletions, and revisions never negotiated, the judge concluded that this contention was an afterthought by Kocina designed to strengthen the union position.

"There was no other apparent reason to pour over the draft language if Kocina in fact believed there was no agreement on substance before he received the draft," the judge remarked.

Moreover, the judge held, the differences in the contract draft were "minor matters of draftsmanship reasonably in accord with the agreement reached."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Avis Rent A Car System, Inc.; complaint alleged violation of Act's Section 8(b)(3). Hearing at Chicago on 28 January 1986. Adm. Law Judge Claude R. Wolfe's decision issued 8 April 1986.

* * *

Antoine's of Beverly Hills (31--CA--15567; 280 NLRB No. 142), Beverly Hills, Calif. 31 July. The Board concluded that the employer illegally terminated 15 employees because of their protected concerted activity and unlawfully threatened employees as well.

The unfair labor practice findings were made on motion for summary judgment, the Board finding the company response to the notice to show cause did not constitute good cause for its failure to file an answer to the complaint.

According to the company response, the employer filed a bankruptcy petition automatically staying all legal proceedings against the employer.

The Board cited the well-settled principle that institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to final disposition.

Board proceedings fall within an exception to the automatic stay provision for proceedings by a government unit to enforce its police or regulatory powers.

(Members Johansen, Babson, and Stephens participated.)

Charges filed by an individual; complaint alleged violation of Act's Section 8(a)(1). General Counsel's motion for summary judgment filed 15 April 1986.

* * *

Shoppers Choice (3--CA--12586--2; 280 NLRB No. 148), Amherst and North Tonawanda, N.Y. 31 July. The employer as successor to Parker Wellington, Inc. violated the Act by refusing to bargain with Food and Commercial Workers 212 as bargaining agent of employees in two separate units: one at Shoppers Choice's store in Amherst and the other at its store in North Tonawanda, the Board found in agreement with an administrative law judge.

The underlying issue was whether the employer, which took over operation of the two stores in February 1985, was a successor employer obligated to recognize and bargain with the union which had been certified in 1973 as bargaining agent at the Amherst store and which had been voluntarily recognized in 1974 at the North Tonawanda store.

Finding successorship, the judge noted that the employer had continued substantially the same business, with substantially the same employees under the same supervision.

Addressing an additional issue posed by the employer-- whether the union represented a majority at the Amherst store-- the judge determined that the union represented 3 of the 5 unit employees when the employer began operations at Amherst.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Food and Commercial Workers Local 212; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Buffalo on 7 and 8 October 1985. Adm. Law Judge James F. Morton's decision issued 29 January 1986.

* * *

Plumbers Local 388 (7--CB--5225, 7--CC--1172; 280 NLRB No. 141), Lansing Mich. 30 July. The Board ruled that union picketing of Daily Heating and Air Conditioning, Inc. was unlawful because it was done to enforce a contract clause which if alleged, the Board would find to be in violation of Section 8(e) of the Act.

The clause at issue prohibits the employer from assigning any employee to work on a job on which a person is performing work within the union's jurisdiction for wages or under conditions which are less favorable than those established in the union contract with the employer.

Because this provision attempts to influence labor relations policies not within the employer's control and does not preserve jobs for the employer's own employees, the Board held, it is a secondary clause which falls within the general prohibition of Section 8(e).

The union erred, the Board further concluded, in contending that the clause in question is a work preservation provision that provided a lawful basis for its picketing.

The picketing was unlawful because it was aimed at enforcing the clause, the Board said. To the extent the clause purported to sanction self-help, it offered merely a basis for an additional unfair labor practice allegation, not a basis for immunizing the picketing, the Board added in finding the violation.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Daily Heating and Air Conditioning, Inc.; complaint alleged violation of Act's Section 8(b)(4)(i) and (ii)(B), and 8(b)(1)(A). Hearing at Lansing on 5 and 6 October 1981. Adm. Law Judge Robert G. Romano's decision issued 30 July, 1982.

* * *

Mantha's Carpet & Draperies, et al. (32--CA--4225; 280 NLRB No. 146), Watsonville, Calif. 31 July. The Board reversed an administrative law judge's dismissal of the instant backpay specification and notice of hearing issued against the respondent, a partnership comprised of Edgar and Kathleen Mantha---Canadian citizens who in 1982 sold the business involved in the underlying unfair labor practice proceeding and moved to Canada--- based on failure of service.

Copies of the specification and notice of hearing had been sent by registered mail to the employer's post office box in Ontario and by certified mail to their attorney, Olsen, in Watsonville, Calif., who represented the employer in the underlying case.

Service upon the employer's California attorney by registered mail was a form of notice reasonably calculated to give the employer knowledge of the proceeding and an opportunity to be heard, the Board ruled. It further held that valid and sufficient service was made upon the employer when a copy of the backpay specification and notice of hearing was served upon Olsen, at that time their attorney of record, in this proceeding by registered mail dated 30 January 1985.

The Board also took note that the employer admitted having actual notice of the backpay specification when by letter dated 7 October 1985 its Canadian attorney stated that he was the employer's agent and had reviewed the contents of the backpay specification and notice of hearing.

(Chairman Dotson and Members Johansen and Babson participated.)

Adm. Law Judge Jerrold H. Shapiro's supplemental decision issued 9 December 1985.

* * *

Longshoremen's Local 1329 (1--CD--761; 280 NLRB No. 147), Providence, R.I. 31 July. Employees of C.H. Sprague & Sons Co., represented by State Fuel Handlers Union, were awarded the work of handling the salt ship and offloading the salt cargo at its Providence terminal.

ILA Local 1329 was found not entitled by means proscribed by the Act to force Sprague to assign the disputed work to employees whom it represents.

In determining the dispute the Board relied on the factors of employer preference, relative skills, safety considerations, and economy and efficiency of operations.

(Members Johansen, Babson and Stephens participated.)

* * *

Taylor Made Office Systems, Inc. (20--CA--17656; 280 NLRB No. 151), Concord, Calif. 31 July. On motion for summary judgment, the Board found that the

employer refusal since 23 July 1982 to bargain with Communications Workers Local 9410 violated Section 8(a)(5) of the Act.

All issues raised by the employer were or could have been litigated in the prior representation proceeding, the Board noted in granting summary judgment.

No current Board Member participated in the decision in the representation proceeding which led to certification of the union following its 29-25 election vote victory.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Communications Workers Local 9410; complaint alleged violation of Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 25 April 1983.

* * *

Sanford Home for Adults and Local 6, Health Professionals, ILA (29--CA--6759, 29--CB--3543; 280 NLRB No. 140), Flushing, N.Y. 31 July. The Board affirmed an administrative law judge's determination of backpay obligations of Sanford Home and ILA Local 6 to two discriminatees and to 39 other employees from whose wages unlawful deductions had been made.

In the proceeding underlying this backpay case, the empl[illegible] and Local 6 were found guilty of unfair labor practices in connection with the employer recognition of the union as bargaining agent of service and maintenance employees and with the deduction of union dues from employee wages. The union also illegally procured the discharge of two workers.

In this backpay case, the judge determined that $4,576.40 is the sum owing to the employees by reason of the unlawful deduction made from their wages. Of that sum, the judge further determined, Local 6 is primarily liable for repayment of $4,490 and the employer is primarily liable for repayment of $86.40.

The respondents also shall pay to the two discharged workers the sums of $3,078 and $2,300, respectively.

In addition, the employer was found liable to the General Counsel for the sum of $350 in satisfaction of its obligations for court costs in connection with proceedings in the U.S. Court of Appeals for the Second Circuit.

(Chairman Dotson and Members Johansen and Babson participated.)

Adm. Law Judge Harold B. Lawrence's supplemental decision issued 24 December 1985.

* * *

Schaeff Namco, Inc. (18--CA--8537; 280 NLRB No. 150), Sioux City, Iowa. 31 July. The Board decided that the employer bargained in good faith during wage-reopener negotiations and did not violate the Act when it unilaterally implemented a 10% reduction in wages of employees represented by Machinists Lodge 1426.

The parties' contract specifically left open the wage rates for the third year of the contract and provided for a 14-day period of negotiations in which to establish new rates. The contract also provided that the employer "shall" implement its wage offer in the event the parties failed to reach agreement or initiate economic action in a specified period.

The Board first considered the totality of the employer's conduct during wage-reopener bargaining and could not conclude that the employer had bargained in bad faith.

The Board then ruled that when the employer implemented its wage reduction, it did not modify the contract's terms, but acted pursuant to the contract's terms.

The notice and waiting provisions of Section 8(d) of the Act, the Board ruled, were inapplicable because neither party terminated or modified the contract. Accordingly, the Board reasoned, it was unnecessary for the employer to comply with the procedural requirements of Section 8(d) when it implemented its wage reduction.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Machinists Lodge 1426; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Sioux City on 16 July 1984. Adm. Law Judge Martin J. Linsky's decision issued 26 November 1984.

* * *

Marko Contractors, Inc. (9--CA--19708--3; 280 NLRB No. 153), Parkersburg, W. Va. 31 July. In view of the employer failure to file an answer to the backpay specification, the Board accepted as true the allegations contained in the specification, and concluded that the net backpay due Thurman Browning is $9128.03 plus interest.

The Board in May 1985 had ordered the employer to make whole discriminatee Browning for losses resulting from employer unfair labor practices. The U.S. Court of Appeals for the Fourth Circuit later enforced that Board order.

(Chairman Dotson and Members Johansen and Stephens participated.)

* * *

Talawanda Springs, Inc. (9--CA--22377; 280 NLRB No. 156), College Corner, O. 31 July. The Board concluded in agreement with an administrative law judge that the employer discriminatorily terminated Barry Harvey and his wife Marjorie Harvey

because they voiced support for Food and Commercial Workers Local 1099, in the event the union sought to organize employees a second time.

The discharges occurred less than 48 hours after the plant manager learned of the Harveys' outspoken support for the union, without warning, one day before the end of the work week. There was no showing that either employee had engaged in any misconduct during the interval between their pro-union remarks on 25 June 1985 and their discharges 27 June 1985. In addition, noted the judge, Barry Harvey's immediate supervisor first learned of the decision to discharge Barry when it happened.

Concluding the employer explanation for discharge was pretextual, the judge held that the employer had unlawfully "acted as quickly as it could to get rid of two outspoken pro-union employees who raised the spectre of a second organizing campaign, even though its hasty action might have interfered with one of its production lines."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1) and (3). Adm. Law Judge Leonard M. Wagman's decision issued 28 February 1986.

* * *

Ironworkers Local 433 (31--CC--1761, et al.; 280 NLRB No. 152), Los Angeles, Calif. and Las Vegas, Nev. 31 July. The Board concluded that the union committed illegal secondary activity at various construction projects in southern California and Nevada.

The union illegally picketed the Southland Distribution Center construction project in San Bernardino with picket signs that did not disclose the employer with which the union had a dispute and picketed at a gate reserved for neutral contractors.

The union also induced employees of J & R Steel to withhold services and fined members who were employees of J & R for working behind a picket line to force J & R and other neutral employers to cease business with Aram Kazazian Construction.

By making an unqualified threat to Vegas Steel that Local 433 would picket the job if United Steel performed steel erection work at the Circus Circus Hotel in Las Vegas, the union further violated the Act.

A final violation was telling S.J. Amoroso that Local 433 could put up a picket line at the McCarran Airport jobsite in Las Vegas in order to force Amoroso and Nevada Steel to remove United Steel from that construction project.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by United Steel, Aram Kazazian Construction, Inc., and Carlson Southwest Corp.; complaint alleged violation of Act's Section 8(b)(4)(i) and

(ii)(B). Hearing at Los Angeles and Las Vegas, on 4 March and 18 April 1985, respectively. Adm. Law Judge Gordon J. Hyatt's decision issued 14 February 1986.

* * *

Electrical Workers (IBEW) Local 1547 (19--CB--5658, et al.; 280 NLRB No. 158), Homer, Alaska. 31 July. The union violated the Act by bringing charges against 10 employees of Homer Electric Association, each of whom timely resigned from the union prior to crossing the picket line, and by imposing fines against them, the Board found in affirming the decision of an administrative law judge.

The union further violated the Act by attempting to cause the employer to discharge the 10 for alleged failure to comply with contract union-security provisions after they continued to pay dues and fees required of financial core members.

The union did not deny that it received telex messages of resignations from the 10 employees, but it contended that such messages of resignation sent by telex or telegram are invalid because there is no way to verify that the employees themselves sent the messages, and because no hard copy confirmation exists.

The suggestion that a telex communication is not a feasible method of effecting resignation from a union is "palpably erroneous," the judge ruled. The judge continued: "Having received the messages identifying the employees as the senders, the presumption arises that this in fact was the case. Thereafter, the Respondent acted at its peril in refusing to accept the messages as valid and authentic expressions of the employees' notification of resignation."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Homer Electric Assoc., and individuals; complaint alleged violation of Act's Section 8(b)(1)(A) and (2). Hearing at Homer on 13 March 1986. Adm. Law Judge Gerald A. Wacknov's decision issued 15 May 1986.

* * *

American Bakeries Co. and Teamsters Local 51 (7--CA--24655, 7--CB--6522; 280 NLRB No. 160), Port Huron and Ypsilanti, Mich. 31 July. The Board sustained an administrative law judge's decision that the General Counsel demonstrated prima facie, by virtue of the pleadings, that the respondent union and employer violated the Act as alleged, and that the respondents failed to rebut that prima facie case when they admitted the facts alleged and merely denied the asserted conclusions of law and presented no evidence to support affirmative defenses they had advanced.

The unrebutted prima facie case necessarily amounted to proof by a preponderance of evidence, the judge said.

The employer and union were found guilty of violating the Act by entering into and applying a collective-bargaining agreement containing a union-security clause covering employees at company plants in Ypsilanti and Port Huron at times when the employer had not hired any employees to work at those locations, and thereafter enforcing the union-security clause against employees subsequently hired.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Bakery Workers; complaint alleged violation of Act's Section 8(a)(1), (2), and (3), and 8(b)(2) and (1)(A). Hearing at Detroit on 28 October 1985. Adm. Law Judge Bernard Ries' decision issued 10 April 1986.

* * *

Molded Acoustical Products, Inc. (4--CA--14794; 280 NLRB No. 163), Easton, Penna. 31 July. The employer illegally refused to bargain with Teamsters Local 773 since 10 December 1984, the date the Board certified the union as bargaining agent of production and maintenance workers at the company's Main Street facility, the Board held in agreement with an administrative law judge.

The employer, which was in the process of closing that facility at the time of certification and which later opened a new facility on Danforth Drive, claimed that the certification did not apply to the facility, operation or employees at its new plant. It also argued that the relocation constituted an unusual circumstance which rebutted the presumption that the union remains as majority representative in the bargaining unit during the certification period.

Neither the law nor the facts supported the employer's position, the judge held. He noted that although the new modern plant is more efficient, the basic operation remains unchanged and the employer continues to operate in the same industry producing the same basic type of product and paying employees the same wages and benefits. The judge also ruled that employer reliance on indications that some employees would not support a strike and wanted to resign from the union did not justify the refusal to bargain during the certification year.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 773; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Bethlehem on 6 May 1985. Adm. Law Judge Wallace H. Nations' decision issued 17 January 1985.

* * *

Hall's Motor Transit Co. (6--CA--18851, et al.; 280 NLRB No. 144), West Middlesex, Penna. 31 July. In light of the employer failure to file an answer to the complaint the Board granted summary judgment and found the employer illegally refused to bargain with Teamsters Local 261 and discriminated against employees in order to discourage union membership.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 261, and individuals; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). General Counsel's motion for summary judgment was filed 2 May 1986.

* * *

Teamsters Local 59 (1--CB--6171(1), and (2); 280 NLRB No. 166), Boston, Mass. 31 July. As recommended by an administrative law judge, the Board dismissed the complaint alleging that the union breached its duty of fair representation by refusing to process grievances of Thomas King and Luke Lomeland under its contract with New Bedford Seafood Cooperative Association, Inc., Fuel Division.

The grievances of King and Lomeland, the judge concluded, were not arbitrable under the contract between the parties because the two workers were temporary employees upon whom the contract did not confer the right to invoke the grievance-arbitration process.

The judge agreed with the position of the union that no arbitration decision could lawfully hold that the "just cause" clause of the contract applied to temporary employees, as well as with the reasoning of the union that the duty of fair representation does not require a union to use its limited resources to argue in arbitration for rights which do not exist under the labor agreement.

The law does not require the respondent to do a useless thing, and the union is not required to pursue a grievance which it would assuredly lose, the judge commented.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Boston on 9 December 1985. Adm. Law Judge David L. Evans' decision issued 24 March 1986.

* * *

Best Glass Co. (31--CA--10124; 280 NLRB No. 159), Las Vegas, Nev. 31 July. The Board sustained an administrative law judge's supplemental backpay finding that Bruce Haase is entitled to $29,871.13 for loss of pay suffered by reason of his illegal termination (as found by the Board in a 1982 decision and order which was enforced by the U.S. Court of Appeals for the Ninth Circuit).

In one modification of the judge's decision, the Board concluded that medical expense claimed for the third quarter of 1980 should be disallowed, because there was no evidence that but for the unlawful discrimination, the incurred medical expense would have been covered under the union health and welfare fund. However, the employer was ordered to pay Hasse $2540 as reimbursement for medical expenses in other quarters of the backpay period.

In agreeing with the judge that the backpay period runs from 16 June 1980 to 25 July 1985 because Haase's unlawful discharge caused him to lose the opportunity to become a permanent employee, the Board did not rely solely on Haase's foreman's statement that the respondent hoped to keep Haase on as a permanent employee. The Board also relied on the evidence showing that the respondent's work volume doubled after Haase's discharge, that Haase was told by

his foreman that he was a "good" employee, and that the number of the respondent's employees doing the type of work performed by Haase increased.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1). Hearing at Las Vegas on 16 June 1980. Adm. Law Judge Michael D. Stevenson's decision issued 4 February 1982.

* * *

The Union Oil Mill, Inc. (15--CA--9953; 280 NLRB No. 143), West Monroe, La. 31 July. Finding the employer raised no issue properly litigable in this unfair labor practice proceeding, the Board granted summary judgment, concluded that the employer illegally refused to bargain with the Oil, Chemical and Atomic Workers as certified representative of a production and maintenance unit, and issued cease-and-desist and bargaining orders.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Oil Workers; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 2 May 1986.

* * *

Wilco Business Forms, Inc. (3--CA--12455; 280 NLRB No. 154), Lansing, N.Y. 31 July. The Board decided that the employer discriminatorily laid off six employees on 25 August 1984 because company employees were engaged in efforts to organize a union.

In adopting an administrative law judge's decision that the layoffs were unlawful, the Board agreed that the General Counsel had established a prima facie showing that union animus was a motivating factor in the employer layoff decision and that the affirmative employer economic defense was pretextual.

The employer was also found guilty of telling employees they would get their jobs back as soon as the company rids itself of union instigators, telling them the employer knows who the ringleaders of the organizing were, and threatening to close its doors and never to bargain with Graphic Communications Local 284M.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Graphic Communications Local 284M; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Ithaca on 19, 20 and 21 February, and 12, 13 and 14 March 1984. Adm. Law Judge Elbert D. Gadsden's decision issued 15 July 1985.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Teamsters Local 70 (Republic Supply Co. of California), San Leandro, Calif. 28 July. 32--CB--2115; JD(SF)--87--86, Gerald A. Wacknov, Adm. Law Judge

M.B.M. Transportation Inc. (Individual), Grand Rapids, Mich. 4 Aug. GR-7-CA-24356; JD--206--86, Bruce C. Nasdor, Adm. Law Judge

Cigna Health Plans (Individual), Glendale, Calif. 22 July. 21--CB--9289; JD(SF)--82--86, Earldean V.S. Robbins, Adm. Law Judge

Briggs Plumbingware, Inc. (Glass and Pottery Workers), Colton, Calif. 25 July. 31--CA--15279; JD(SF)--89--86, Michael D. Stevenson, Adm. Law Judge

Lodi Ready Mix (Teamsters Local 439), Lodi, Calif. 24 July. 32--CA--7892; JD(SF)--91--86, Jay R. Pollack, Adm. Law Judge

Diablo Paving (Operating Engineers Local 3 (IOUE)), Rancho Cordova, Calif. 25 July. 20--CA--19747; JD(SF)--90--86, Gordon J. Myatt, Adm. Law Judge

Howard R. Singer Legal Services and/or David D. DeAngelis (Individual), Pittsburgh, Penna. 30 July. 6-CA-16246; JD--207--86, Bernard Ries, Adm. Law Judge

New Horizons For the Retarded, Inc. (Ladies' Garment Workers, and The Grievance Committee), Ellenville, N.Y. 29 July. 3-CA-12852, 3-CA-12852-2, 3-CA-12965; JD(NY)--64--86, Joel P. Biblowitz, Adm. Law Judge

WXON-TV, Inc. (Broadcast Employees (NABET)), Southfield, Mich. 29 July. 7--CA--25199; JD--196--86, James L. Rose, Adm. Law Judge

Charles A. Drescher & Son, Inc. and Drescher Paper Box (Retail, Wholesale Union), Buffalo, N.Y. 29 July. 3--CA--13185; JD--205--86, Thomas R. Wilks, Adm. Law Judge

Wolff & Munier, Inc. (Individual), Newark, N.J. 29 July. 22--CA--10279; JD(NY)--65--86, D. Barry Morris, Adm. Law Judge

Westvaco Corp. (Electrical Workers Local 1753 (IBEW)), North Charleston, S.C. 29 July. 11-CA-11872; JD(ATL)--52--86; Lawrence W. Cullen, Adm. Law Judge

Electrical Workers Local 113 (IBEW) (Individual), Colorado Springs, Color. 11 July. 27--CB--2284; JD(SF)--80--86; Richard J. Boyce, Adm. Law Judge

Westinghouse Broadcasting and Cable, Inc. (WBZ-TV) (Electrical Workers Local 1228 (IBEW)), Boston, Mass. 24 July. 1-CA-21, 594; JD-193-86; Nancy M. Sherman, Adm. Law Judge

Southern Illinois Builders Assoc. (Individual), Mt. Vernon, Ill. 15 July. 14--CB--6273; JD--179--86, George F. McInerny, Adm. Law Judge

John's Lumber & Hardware Co. (Teamsters Local 247), Mt. Clemens, Mich. 28 July. 7--CA--25137; JD--199--86, Marion C. Ladwig, Adm. Law Judge

Boyd's Construction, Inc. (Steelworkers), Delaware, O. 28 July. 8--CA--18400, 8--RC--13259; JD--204--86, David S. Davidson, Adm. Law Judge

Jasper Seating Co., Inc. (Individuals), Jasper, Ind. 28 July. 25--CA--17697; JD--202--86, Burton S. Kolko, Adm. Law Judge

GIT-N-GO, Inc. (Food & Commercial Workers Local 76), Tulsa, Okla. 4 August. 16-CA-12465, 12512; JD(ATL)--51--86, William N. Cates, Adm. Law Judge

Weatherwise Conditioning Corp. (Operating Engineers Local 295-295C), Brooklyn, N.Y. 4 August. 29-RM-738, 29-RC-6359, 29-CB-5941; JD(NY)--66--86, Eleanor Macdonald, Adm. Law judge

Federal Armored Express, Inc. (Individual), Cleveland, O. 5 August. 8--CA--18712; JD--200--86, Lowell Goerlich, Adm. Law Judge

Consolidated Dress Carriers, Inc., Greenberg's Express Inc., GRG Delivery Inc., Clothing Carriers Corp., Dynamic Delivery Corp., JHT Leasing Corp. and Trucking Personnel, Inc. (Trades Employees Local 20408), New York, N.Y. 4 August. 2-CA-15783; JD(NY)--68--86, Steven B. Fish, Adm. Law Judge

U.S. Postal Service (American Postal Workers), Boston, Mass. 1 August. 1-CA-21,628(P); JD-203-86, Wallace H. Nations, Adm. Law Judge

Castaways Hotel and Casino (Individual), Las Vegas, Nev. 28 July. 31--CA--14384; JD(SF)--92--86, James M. Kennedy, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following represenation cases. In some,requests for review may be filed with the Board.)

Polk Brothers, Inc. (13-RC-16899), Chicago, Ill. 23 July. Full-time and regular part-time dusters, day-janitors, night-janitors, auxiliary loaders, stockmen, and shipping and receiving clerks shall vote for representation by Chicago Truck Drivers, Helpers and Warehouse Union (Independent), or for no representation.

Merkel-Donohue, Inc. (3-RC-8926), Rochester, N.Y. 1 August. Full-time and regular, part-time service drivers and warehouse employees, including service installation employees, drivers - warehousemen employees and warehouse drivers shall vote for representation by Teamsters Local 118, or for no representation.

* * *

NATIONAL LABOR RELATIONS BOARD
DIVISION OF INFORMATION
WASHINGTON, DC 20570

1 August 1986

NOTICE OF PUBLICATION

Volume 273 of DECISIONS AND ORDERS OF THE NATIONAL LABOR RELATIONS BOARD has been published by the Superintendent of Documents, U.S. Government Printing Office.

Volume 273, 2 volume set, covers the period 30 November 1984 through 12 February 1985.

The price: $58.00

Orders for Volume 273, Stock No. 031-000-00263-0, should be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Orders must be accompanied by cash, check or money order--unless the purchaser has a Deposit Account Number. Do NOT send orders or payments to the NLRB.

An order form follows:

ORDER FORM To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Credit Card Orders Only

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

VISA

MasterCard

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Send _____ copies of Volume 273, Decisions and Orders of the National Labor Relations Board.
Stock. No. 031-000-00263-0. Price: $58.00

Company or personal name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity	Charges
Enclosed	
To be mailed	
# Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2029

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

1 - 8 AUGUST 1986

NEWARK PUBLIC LIBRARY (W-2029)

SEP - 2 1986

U. S. GOVT. PUBS.
DEPOSITORY

CASES SUMMARIZED

Ashe Brick Co.	Van Wyck, S.C.	5
Auto Workers Local 980	Edison, N.J.	4
Davis Acoustical Co., Inc.	East Hartford, Conn.	4
Fountainview Place	Indianapolis, Ind.	2
Georgia-Pacific Corp., Crossett Division	Louisville, Miss.	2
Hydrotherm, Inc.	Dundalk, Md.	6
J.D. Landscaping Corp.	Ceiba, P.R.	1
Steelworkers and its Local 4754	Chickasaw, Ala.	5
U.S. Postal Service and American Postal Workers Union	Cincinnati, O.	3
Value Line Co.	Memphis, Tenn.	2
Whirlpool Corp.	St. Joseph, Mich.	1
Without Reservation	San Francisco, Calif.	6

LR1.15/2:

OTHER CONTENTS

List of Directions of Elections by Regional Directors 8

List of Decisions of Administrative Law Judges 7

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

J.D. Landscaping Corp. (24--CA--5082; 281 NLRB No. 4) Ceiba, P.R. 8 August. The employer, successful bidder to provide landscaping services at the U.S. Navy Base at Ceiba, Puerto Rico, violated the Act by refusing to consider for employment employees of the predecessor landscaping contractor because they had supported Union de Tronquistas de Puerto Rico, Local 901, the Board found in agreement with an administrative law judge.

The judge first noted that the employer was not required to hire any of the predecessor employees but the refusal to do so could not be based on antiunion motives. Credited and uncontested testimony of witnesses for the General Counsel, however, revealed that the field supervisor with complete authority to hire the employer's work force had harbored animus against the union and stated that he would not hire individuals whom he specifically thought were union activists.

The mere fact that the field supervisor did hire 20 employees who had worked for the predecessor "is not itself sufficient to negate the clear, credible, and uncontradicted testimony of employees" concerning the supervisor's animus toward those whom he considered to be union activists, the judge held.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Hato Rey on 15 and 16 July 1985. Adm. Law Judge James L. Rose's decision issued 22 October 1985.

* * *

Whirlpool Corp. (7--CA--24007; 281 NLRB No. 7) St. Joseph, Mich. 8 August. As recommended by an administrative law judge, the Board dismissed the complaint alleging that the employer violated Section 8(a)(5) of the Act by refusing to make available a police undercover agent for questioning by Machinists Local 1918 at certain pre-arbitration hearings. The employer refusal to do so, it was alleged, constituted unilateral repudiation of an established condition of employment.

The undercover agent had been introduced into the plant as part of a local police criminal investigation of an unusual amount of theft and use of illegal substances at the company facility. Whirlpool agreed to use of the undercover agent.

The Board agreed with the judge that the employer was not shown to have undertaken, through past practice or mutual understanding, an obligation to produce witnesses at pre-arbitration "suspension" hearings if the union requested their presence.

The Board therefore said it need not decide whether the union waived any right to bargain with the employer over the alleged change in terms and conditions of employment when the employer failed to produce the witness at issue in this case.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Machinists Local 1918; complaint alleged violation of the Act's Section 8(a)(5). Hearing at St. Joseph on 24 and 25 June, and 23 and 24 July 1985. Adm. Law Judge Bernard Ries' decision issued 12 March 1986.

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place (25--CA--17436, et al.; 281 NLRB No. 8) Indianapolis, Ind. 8 August. The Board upheld an administrative law judge's decision that the nursing home operator committed several unfair labor practices during a renewed organizing effort by Food and Commercial Workers Local 917 at the employer's facility in summer 1985.

To remedy violations, the Board ordered the employer to cease discriminatorily transferring workers to the laundry room because of their union activities, threatening employees to start bargaining from scratch if they select the union as bargaining agent, threatening discharge if employees continue to support the union and discriminatorily transferring employees to the night shift.

The employee illegally transferred to the laundry was Janet Vasquez who served as union observer at two representation elections. The employer position was that because its laundry room operation was in such disarray with a major backlog, it decided to transfer Vasquez, who supposedly was doing poor work in her then current position, to the laundry room. Terming the employer contentions "basically in conflict with one another," the judge reasoned that "if Vasquez was so unacceptable in her prior duties, it is then highly unlikely she would have been selected to help correct the serious difficulties in the laundry room."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Food and Commercial Workers Local 917; complaint alleged violation of the Act's Section 8(a)(1) and (3). Hearing at Indianapolis. Adm. Law Judge Phil W. Saunders' decision issued 3 April 1986.

* * *

Value Line Co. (26--CA--11526; 281 NLRB No. 5) Memphis, Tenn. 8 August. Absent good cause being shown for the employer failure to file a timely answer to the complaint, the Board granted summary judgment and found the employer violated the Act by refusing and denying since 31 January 1986 requests of Furniture Workers Local 282 for access to the company's Memphis facility for the purpose of administering the collective-bargaining agreement.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Furniture Workers Local 282; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 22 May 1986.

* * *

Georgia-Pacific Corp., Crossett Division (26--CA--8008; 281 NLRB No. 2) Louisville, Miss. 8 August. The Board agreed with an administrative law judge holding that the employer, which continued to operate its Louisville, Mississippi, plywood plant with temporary nonunit replacements during an admittedly lawful 6-week lockout of its unit employees did not violate the Act.

The Board found that the employer used replacements during the lawful lockout to bring economic pressure to bear in support of what was a legitimate bargaining demand. This action was, in the words of the Board's recent decision in Harter Equipment, "a measure reasonably adapted to the achievement of a legitimate employer interest" and did not violate Section 8(a)(3).

In Harter Equipment, 280 NLRB No. 71 (June 24, 1986), the Board held that, absent specific proof of antiunion motivation, an employer does not violate Section 8(a)(3) and (1) of the Act by hiring temporary replacements to engage in business operations during a lawful lockout. The Board also found that using temporary employees during such a lockout in order to bring economic pressure in support of legitimate bargaining demands is "(1) a measure reasonably adapted to the achievement of a legitimate employer interest and (2) has only a comparatively slight adverse effect on protected employee rights."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Carpenters Southern Council; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Louisville on 23 and 24 June 1980. Adm. Law Judge Frank H. Itkin's decision issued 23 December 1980.

* * *

United States Postal Service and American Postal Workers Union (9--CA--22239(P), et al.; 280 NLRB No. 169) Cincinnati, O. 7 August. The Board disagreed with an administrative law judge's failure to find violations of the Act when the employer and the union refused to honor William Huber's and Bert Franklin's revocations of dues-checkoff assignments.

In United States Postal Service, 279 NLRB No. 8 (Mar. 31, 1986), a case which issued subsequent to the judge's decision in this case, the Board held that the dues-checkoff authorization used by the Postal Service provided for the payment of dues as a quid pro quo for union membership and was therefore revokable when union membership ceased to exist by virtue of an effective resignation from membership. For the reasons set forth in that decision, the Board found that Huber's and Franklin's dues-checkoff authorizations in the instant case--- identical to that in the Postal Service case--- were revoked by operation of law when they resigned their union membership. Accordingly, the Board held that by refusing to honor the revocations of Huber and Franklin, the Postal Service violated Section 8(a)(1) and (3) and the union violated Section 8(b)(1)(A).

Member Johansen noted that the same result is reached if the Board construes the authorization to continue but that, as the amount of dues owed is zero, zero is the amount to be deducted and remitted.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by American Postal Workers Union and individuals; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Cincinnati on 9 October 1985. Adm. Law Judge Joel A. Harmatz's decision issued 5 December 1985.

* * *

Davis Acoustical Co., Inc. (39--CA--2721; 280 NLRB No. 168) East Hartford, Conn. 7 August. The Board in agreement with an administrative law judge decided that the employer unlawfully refused to furnish Carpenters Local 43 with certain information relating to the employer relationship with Advanced Interiors, Inc.

The union request for information met the test of necessity and relevance, the judge ruled, because the union had reasonable grounds to believe that a diversion of bargaining unit work to Advanced might have occurred.

On brief the General Counsel had contended that based on the response it received from the office of the Connecticut Secretary of State, the union had a good-faith reason to conclude that Advanced was in fact not a corporation at all but merely a "corporate fiction."

The judge found that the union had information which reasonably led it to believe that the employer might be conducting a double-breasted operation for the purpose of circumventing contractual requirements.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Carpenters Local 43; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Hartford on 14 January 1986. Adm. Law Judge John H. West's decision issued 27 March 1986.

* * *

Auto Workers Local 980 (22--CA--11263; 280 NLRB No. 161) Edison, N.J. 31 July. The Board upheld the decision of an administrative law judge that the employer illegally terminated office secretary Carolyn Seres because of statements she made to a local newspaper reporter which formed the basis of a published story concerning her dispute with the employer.

The article reported that Seres' said several of her benefits had been curtailed, that she "receives no retirement plan and no breaks except a half hour for lunch every day," and that "she sometimes has received her paycheck one or two days late."

The judge first determined that Seres in her role as secretary did not deal with confidential labor relations matters of the employer and thus because the "labor-nexus" requirement had not been met, Seres did not lose protection under the Act.

The judge further concluded that Sere's comments to the reporter constituted protected activity. Addressing the employer reason for the discharge--alleged poor job performance--- the judge found that Seres had received a substantial raise in January 1981 and had been recommended for another raise only five days before the newspaper article appeared in October 1981 which prompted her illegal termination.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Office Employees Local 32; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Newark on 2, 3, 4 and 13 August 1982. Adm. Law Judge D. Barry Morris' decision issued 12 January 1983.

* * *

Ashe Brick Company (11--CA--11839; 280 NLRB No. 162) Van Wyck, S.C. 31 July. The Board adopted an administrative law judge's findings that the employer violated the Act by withdrawing recognition from Brick and Glass Workers Local 904, conditioning the signing of an agreement on union payment for damages to company property of an undetermined cause, and refusing to execute a written contract embodying a full and complete agreement reached between the parties.

As to remedy, the Board modified the judge's recommendation with respect to certain employees who participated in a strike which began as an economic strike and which was converted into an unfair labor practice strike when the employer illegally withdrew recognition.

Because the record showed that at least seven employees were hired in unit positions after the strike was converted, the General Counsel urged that the judge should have ordered those seven dismissed and the displaced strikers reinstated and made whole, instead of merely being placed on a preferential hiring list. The Board agreed with the General Counsel and modified the remedy accordingly.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Aluminum and Glass Workers Local 904; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Rock Hill on 11 February 1986. Adm. Law Judge William N. Cates' decision issued 21 April 1986.

* * *

Steelworkers and its Local 4754 (15--CB--3105; 280 NLRB No. 164) Chickasaw, Ala. 31 July. As part of the remedy for union unfair labor practices, the Board ordered the union to cease refusing upon the request of Warrior and Gulf Navigation Company to execute and effectuate the collective-bargaining agreement relating to the firm's Yellow Creek-Tombigbee Waterway operation agreed upon on 6 September 1985.

The union had contended that since the membership rejected the Yellow Creek agreement, it was not obliged to execute the agreement and therefore it did not breach its bargaining obligations.

An administrative law judge whose decision the Board affirmed concluded that ratification of the agreement by the union membership had never been a condition of agreement and that the employer had never been advised to the contrary prior to the union rejection of the Yellow Creek agreement.

It may well have been the intent of the union negotiating committee to seek approval of the membership prior to agreement, but credited testimony did not reveal that such intent was communicated to the company prior to agreement, the judge remarked.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Warrior and Gulf Navigation Company; complaint alleged violation of Act's Section 8(b)(3). Hearing at Mobile on 6 and 7 January and 18 February 1986. Adm. Law Judge Hutton S. Brandon's decision issued 5 May 1986.

* * *

Without Reservation (20--CA--17170, 20--CA--17247; 280 NLRB No. 165) San Francisco, Calif. 31 July. Sustaining the decision of an administrative law judge, the Board concluded that the restaurant owner violated the Act by refusing since 15 June 1982 to bargain with Hotel and Restaurant Employees Local 2.

The judge determined that the employer and the union had agreed to a card count as the means of ascertaining if the union represented a majority of unit employees; that the card count showed the union represented a majority; and that the employer, by avoiding completion of the verification of signatures procedures, which were not part of the original card count agreement, tried to repudiate the previously agreed upon method of determining if a union majority existed.

Noting company opposition to union organizing shown by several independent violations of the Act which included illegal interrogation accompanied by threats of reprisal and promises of benefits, the judge wrote that an employer "desire for an election arose subsequent to the card count and is a ploy to defer if not avoid the obligation to bargain."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 2; complaint alleged violation of Act's Section 8(a)(1). Hearing at San Francisco on 17, 18 and 19 January 1983. Adm. Law Judge Joan Wieder's decision issued 26 May 1983.

* * *

Hydrotherm, Inc. (5--CA--16508, 5--AC--43; 280 NLRB No. 167) Dundalk, Md. 7 August. Affirming an administrative law judge decision, the Board decided that the employer refusal to bargain with Teamsters Local 311 as successor union to Teamsters Local 333 violated the Act.

A 1984 certification was amended by substituting Teamsters Local 311 as bargaining agent of a production and maintenance unit.

Critical to the ultimate issues of whether a bargaining violation occurred and whether an amendment of certification should issue was the question posed by the employer as to the effect on its duty to bargain of a merger between the two locals which occurred prior to the date on which the successor union filed a petition for an election among Hydrotherm employees.

The judge concluded, with Board approval, that the merger brought about no significant change in the actual identity of the bargaining representative, that Local 311 was the lawful successor entitled to the bargaining rights of the predecessor and that the certification should accordingly be amended.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Teamsters Local 311; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Baltimore on 22 and 23 October 1984. Adm. Law Judge Arline Pacht's decision issued 21 December 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Stamping Specialty Co., Inc. (Teamsters Local 135), Indianapolis, Ind. 8 August. 25--CA--17687, 17791; JD--213--86, Donald R. Holley, Adm. Law Judge

Morning Star International, Inc. (Ladies' Garment Workers), Franklin, Va. 8 August. 5--CA--17525; JD--209--86, David L. Evans, Adm. Law Judge

Syncor International Corp. (Teamsters Local 107), Philadelphia, Penna. 6 August. 4--CA--15468; JD--215--86, David S. Davidson, Adm. Law Judge

Daka, Inc. (Hotel and Restaurant Employees Local 217), Warwick, R.I. 6 August. 1--CA--22337, 1--CA--22591-1; JD--214--86, Richard I. Denison, Adm. Law Judge

Michigan Bell Telephone Co. (Individual), Southfield, Mich. 8 August. 7--CB--6759; JD--216--86, Bernard Ries, Adm. Law Judge

Arrow Enterprises (Individual), Stewart, Fla. 6 August. 6--CB--7014; JD--210--86, James L. Rose, Adm. Law Judge

Ben Strauss Industries, Inc. (Individual), Brooklyn, N.Y. 6 August. 29-CB-6100; JD(NY)--69--86, James F. Morton, Adm. Law Judge

Union Terminal Warehouse, Inc. (Teamsters Local 598), Vernon, Calif. 29 July. 21--CA--24218; JD(SF)--88--86, Joan Wieder, Adm. Law Judge

Southwest Distributing Co., Inc. (Teamsters Local 1111 and Individuals), Houston, Tex. 11 August. 23-CA-9824-1, et. al.; JD(ATL)--38--86, Richard J. Linton, Adm. Law Judge

United Steel Erectors, Inc. (Operating Engineers), Tulsa, Okla. 11 August. 16-CA-12440; JD(ATL)--53--86, Richard J. Linton, Adm. Law Judge

M & B Headwear Mfg. Co., Inc. (Textile Workers), Richmond, Va. 12 August. 5--CA--15375; 5--CA--16074, Leonard M. Wagman, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Manor Care of Texas City, Inc. (23-RC-5303), Texas City, Tex. 5 August. Full-time and regular part-time nurses' aides, laundry employees, and dietary employees shall vote for representation by United Steelworkers of America, or for no representation.

Bexar County Legal Aid Association, Inc. (23-RD-588), Las Palmas, Tex. 5 August. Full-time and part-time non-management employees, including licensed or unlicensed attorneys, Reginald Heber Smith fellows, secretaries, paralegals, interviewers, law clerks, receptionists, clerical staff, and involvement workers (Pro Bono workers), shall vote for representation by Bexar County Legal Services Union, NOLSW, District 65, UAW, AFL-CIO, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2030

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

11 - 15 AUGUST 1986 (W-2029)

CASES SUMMARIZED

NEWARK PUBLIC LIBRARY
SEP 3 1986
U. S. GOVT. PUBS
DEPOSITORY

Century City Hospital	Los Angeles, Calif.	2
Chem-Nuclear System, Inc.	Barnwell, S.C.	4
Hawg-N-Action, Inc. & J.L. Excavating, Inc.	Denver, Colo.	2
Herbert Halperin Distrb. Corp.	Cheverly and Lanham, Md.	3
Holiday Pack Foods	New York, N.Y.	1
Ofalco Properties, Inc. et al.	St. Louis, Missouri	5
Plumbers Local 447 (NPS Energy Services, Inc.)	Sacramento, Calif.	1
Prudential Insurance Co. of America	Hyannis, Mass.	3
Service America Corp.	Indianapolis, Ind.	6
Sonat Marine, Inc.	Philadelphia, Penna.	5
Springfield Transit Management, Inc.	Springfield, Mass.	4
Vanden Brink Meat Co.	Grand Rapids, Mich.	3

LR1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 7

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Holiday Pack Foods (29--CA--10963; 281 NLRB No. 11), New York, N.Y. 12 August Affirming an administrative law judge decision, the Board decided that the employer violated the Act by refusing since 7 November 1983 to bargain with Teamsters Local 807.

The certification of the union following a secret-ballot election was defective and of no effect, the employer argued, because of bias and prejudicial conduct by the Board agent assigned to handle the instant case as well as the underlying representation case.

The judge rejected the employer argument. He found that except for certain phone conversations between company attorneys and the Board agent dealing with the employer desire to proceed to an expedited election without hearing, there was no other evidence presented to indicate bias and prejudice.

The judge added that the employer argument of bias and prejudice was based on "pure speculation" arising from the agent's membership in an NLRB employees' union. He cited Board and court precedent holding that membership by an employee of the Board in an NLRB Union does not cause that employee to be biased and prejudiced.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 807; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at New York, N.Y. on 21 January and 24 June 1985. Admin. Law Judge Julius Cohn's decision issued 11 March 1986.

* * *

Plumbers Local 447 (NPS Energy Services, Inc.) (20--CB--6627,6644; 281 NLRB No. 10), Sacramento, Calif. 12 August. The Board sustained an administrative law judge's decision that the union violated the Act by failing to register charging parties Wesley Venti and James Hester for dispatch under its exclusive hiring hall system and by refusing to dispatch them to jobs with NPS Energy in March 1985.

The union is a party to a collective-bargaining agreement to which NPS is bound and which recognizes the union as the sole and exclusive source of referral for employment.

The union conceded that had Venti and Hester been permitted to register on the travelers' out-of-work list, each would have been dispatched to work for NPS at a nuclear facility.

Asserting that it possessed legitimate justification for not adhering to established standards for the operation of its hiring hall, the union pointed out that such was necessary for implementation of a reciprocal arrangement with other Northern California Plumbers locals to apportion available jobs among them.

* * *

The, judge however, agreed with the General Counsel that neither Venti nor Hester had timely notice of the union's altered hiring hall procedures and therefore the union defense was without merit.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Individuals; complaint alleged violation of Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Sacramento, Calif. on 19 December 1985. Adm. Law Judge Burton Litvack's decision issued 17 March 1986.

* * *

Hawg-N-Action, Inc. & J.L. Excavating, Inc. (27--CA--8053--2; 281 NLRB No. 13), Denver, Colo. 12 August. The Board dismissed the complaint as to Hawg-N-Action but found J.L. Excavating guilty of an illegal refusal-to-bargain and ordered that employer to bargain with Operating Engineers Local 9 and to reimburse employees for loss of wages and benefits incurred by reason of the employer failure to abide by contract terms.

Regarding Hawg-N-Action, the complaint alleged bargaining violations beginning in June 1982 during pendency of Hawg-N-Action's Chapter 11 bankruptcy proceedings. Hawg-N-Action continued to do business until 12 July 1982, when bankruptcy proceedings were converted to a Chapter 7 liquidation.

For that relevant time period the Board has no jurisdiction over Hawg-N-Action's obligations under the executory collective-bargaining agreement, the Board took note, absent evidence that it did not agree to assume the agreement in the Chapter 11 proceeding.

Since there was no evidence that J. L. Excavating was brought within the jurisdiction of the bankruptcy proceedings, the Board adopted the judge's recommended order as it applied to this respondent's bargaining obligations.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Operating Engineers Local 9; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Denver, Colo. on 23 February 1983. Adm. Law Judge Roger B. Holmes' decision issued 29 June 1983.

* * *

Century City Hospital (31--CA--15586; 281 NLRB No. 3), Los Angeles, Calif., 11 August. The Board found that the employer raised no issue properly litigable in this unfair labor practice proceeding, granted summary judgment, found the employer violated the Act by illegally refusing to bargain with Hospital and Service Employees Local 399, certified representative, and issued cease-and-desist and bargaining orders.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Hospital and Service Employees Union, Local 399; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 14 April 1986.

* * *

Herbert Halperin Distributing Corp. (5--CA--17999; 281 NLRB No. 1), Cheverly and Lanham, Md. 11 August. On motion for summary judgment, the Board concluded that the employer refusal since 3 April 1986 to bargain with Teamsters Local 639 and 730 violated the Act.

The employer questioned the validity of the union certification following an election victory. It said that because of the lapse of time and substantial turnover, the election results are unrepresentative of present employee sentiment.

Finding all material issues had been previously decided, the Board ordered the employer to stop violating the Act and to bargain with the union.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Teamsters Local 639 and Local 730; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 2 June 1986.

* * *

Prudential Insurance Company of America (1--CA--23427; 281 NLRB No. 9), Hyannis, Mass. 11 August. Because all issues the employer raised were or could have been litigated in a prior representation proceeding which resulted in certification of the Food and Commercial Workers, the Board granted summary judgment, finding the employer violated the Act by refusing to bargain with the union.

The union was certified as bargaining agent of all field service staff employees at the firm's Cape Cod District office in September 1985.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by United Food and Commercial Workers; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 7 April 1986.

* * *

Vanden Brink Meat Company (7--CA--25102; 281 NLRB No. 6), Grand Rapids, Mich. 11 August. The Board granted motion for summary judgment, finding that the employer violated the Act by refusing to bargain with Teamsters Local 406 after the union was certified as bargaining agent following its election victory.

The employer had raised no issue properly litigable in this unfair labor practice proceeding, the Board ruled.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Teamsters Local 406; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 3 February 1986 .

* * *

Chem-Nuclear System, Inc. (11-CA--11697; 281 NLRB No. 12), Barnwell, S.C. 13 August. The Board upheld an administrative law judge's finding that the employer discriminatorily terminated Norman Duvall because of his activities for the Oil, Chemical and Atomic Workers.

Employers reasons for discharging Duvall were pretextual, the judge found, noting that similar occurrences had previously gone unremedied and the employer had departed from its admitted practice of using a progressive disciplinary system.

Moreover, noted the judge, the employer had told another employee that Duvall was discharged, at least in part, because of his union activities. In addition, the judge pointed out, the alleged investigation into allegations against Duvall was "little more than a sham": the investigation uncovered no direct evidence supporting the allegations and Duvall was never asked to defend those allegations.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Oil, Chemical and Atomic Workers; complaint alleged violation of Act's Section 8(a)(3) and (1). Hearing at Barwell, South Carolina on 30 September and 1 October 1985. Admin. Law Judge J. Pargen Robertson's decision issued 23 January 1986.

* * *

Springfield Transit Management, Inc. (1--CA--19226; 281 NLRB No. 17), Springfield, Mass. 14 August. Members Johansen and Babson upheld an administrative law judge's decision that the employer violated the Act by unilaterally reducing the wages of employees in its office clerical unit when it took over management of a bus line owned by the Pioneer Valley Transit Authority.

Chairman Dotson dissented. He would remand the proceeding to the judge for further consideration of the issue of jurisdiction. He cited Res-Care, Inc., 280 NLRB No. 78, and Long Stretch Youth Home, 280 NLRB No. 79.

Res-Care and Long Stretch clarified the principles under which the Board may, in exercising its discretion, decline to assert jurisdiction over an employer because of its relationship to an entity exempt from Board jurisdiction.

The panel majority noted that in the instant case there were no exceptions to the judge's finding that the Board should assert jurisdiction over the employer. Thus, the panel majority concluded, "we need not pass on the discretionary jurisdictional issue in this case."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Local 448, Transit Union; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Springfield, Mass. on 13-14 December 1982. Adm. Law Judge Walter H. Maloney, Jr.'s decision issued 10 March 1983.

* * *

Ofalco Properties, Inc. et al. (14--CA--18109; 281 NLRB No. 16), St. Louis, Missouri 15 August. On motion for summary judgment, the Board decided that the employer violated the Act by refusing to furnish Carpenters District Council of St. Louis certain information regarding the wage rates paid by the employer's subcontractors.

Although the employer in November 1985 had executed a settlement agreement with the union, approved by the Acting Regional Directo, providing that the employer would provide the requested information, the employer failed to remit this information and thereby breached the terms of the agreement. The Board found therefore that the Regional Director had correctly vacated the settlement agreement.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Carpenters District Council of St.Louis; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 30 January 1986.

* * *

Sonat Marine, Inc. (4--CA--14832--3, 15026; 281 NLRB No. 20), Philadelphia, Penna. 15 August. As recommended by an administrative law judge, the Board dismissed the complaint alleging that the employer violated the Act by refusing to bargain in good faith with Marine Engineers Beneficial Association, District 2, concerning new contracts to cover employees in three separate bargaining units at three Sonat subsidiaries also named as respondents---Interstate Oil Transport Company, Mariner Towing Company and IBC Company.

Three "final" bargaining proposals made by the employer, the judge concluded, were constituent parts of a course of hard but not bad faith bargaining. The judge found that the employer refusal to retreat from its position on the three "final" proposals could not be equated with a refusal to bargain; nor was the employer's mere repetition of the proposals made in good faith evidence of bad faith, absent other evidence of bad faith, not present in this case, he said.

In dismissing, the judge further noted that the parties had many bargaining sessions during which individual portions of Sonat's proposals were thoroughly explained and discussed, and that Sonat had never refused to discuss the contents of any of its proposals including the "final" ones.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Marine Engineers Beneficial Assn., District 2; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Philadelphia on 9 days in July, August and November 1985. Adm. Law Judge Claude R. Wolfe's decision issued 26 March 1986.

* * *

Service America Corp. (25--CA--17864; 281 NLRB No. 14), Indianapolis, Ind. 15 August. Finding the employer was attempting to relitigate identical issues which were considered by the Board in a prior representation proceeding, the Board granted summary judgment, found a bargaining violation and issued cease-and-desist and bargaining orders.

The employer had attacked the validity of the certification of Teamsters Local 135 in the prior representation proceeding.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Teamsters Local 135; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 16 May 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

3-B Stores, Inc. (Food & Commercial Workers Local 881), Decatur, Ill. 12 August. 33--CA--7513; JD--220--86, David L. Evans, Adm. Law Judge

Bates Nitewear Co. (Textile Workers), Greensboro, N.C. 13 August. 11-CA-11785-1, 11785-2, 11800; JD(ATL)--49--86, Robert A. Gritta, Adm. Law Judge

Cedar Rapids Building and Construction Trade Council (Siebke - Hoyt and Company), Cedar Rapids, Iowa 13 August. 18-CC-1116; JD--223--86, Martin J. Linsky, Adm. Law Judge

Daniel's Pallet Service (Individuals), Flat Rock, Mich. 12 August. 7--CA--24270(1), 24270(2); JD--222--86, Irwin H. Socoloff, Adm. Law Judge

Miami Health Care Center (Individuals), Troy, Ohio. 15 August. 8-CA-18242, 18341, 18450, 18451; JD-224-86, Wallace H. Nations, Adm. Law Judge

Hinz Store Fixtures & Construction Co., Inc. (Individual), San Jose, Calif. 8 August. 32--CA--6909; JD(SF)--097--86, George Christensen, Adm. Law Judge

Hohn Industries, Inc. (Sheet Metal Workers Local 71), Batavia, N.Y. 13 August. 3--CA--13209; JD--219--86, Thomas R. Wilks, Adm. Law Judge

Stage Employees IATSE Local 46 (Individuals), Nashville, Tenn. 13 August. 26--CB--2222, 2226; JD(ATL)-55-86, Philip P. McLeod, Adm. Law Judge

New Par-Troy Restaurant and Diner (Individual), Parsippany, N.J. 13 August. 22--CA-14293; JD(NY)--74--86, Joel P. Biblowitz, Adm. Law Judge

R. Dakin & Company (Teamsters Local 78), Fairfield, Calif. 8 August. 20--CA--19962; JD(SF)--94--86, Roger B. Holmes, Adm. Law Judge

Rush Presbyterian - St. Lukes Medical Center (Individual), Chicago, Ill. 15 August. 13--CA--25368, 25688; JD--225--86, Thomas A. Ricci, Adm. Law Judge

Tube Craft, Inc. (Steelworkers, Local 8703), Cleveland, Ohio 13 August. 8--CA--18821; JD--221--86, Walter H.Maloney, Jr., Adm. Law Judge

Wright Tool Company (Boilermakers Local 1055 and Individuals), Barberton, Ohio 12 August. 8--CA--17944, 17972, 17983; JD--212--86, Elbert D. Gadsden, Adm. Law Judge

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2031

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

18 - 22 AUGUST 1986 (W-2031)

NEWARK PUBLIC LIBRARY
SEP 11 1986
U. S. GOVT. PUBS.
DEPOSITORY 326

CASES SUMMARIZED

Aero Quality Plating Co., Inc.	Oakland, Calif.	3
Carpenters Local 1243 (Northern Alaska Associated General Contractors)	Fairbanks, Alaska	2
Dresser Industries, Inc.	Stratford, Conn.	2
Laborers Local 225 and Laborers District Council of Chicago	Chicago, Ill.	1
Pan American Grain Co., Inc. and Bulk Terminal Operations, Inc.	San Juan, Puerto Rico	1

OTHER CONTENTS

List of Decisions of Administrative Law Judges 4

General Counsel Memo: Guideline Memorandum Concerning Continuity of Bargaining Representative after Affiliations, Mergers and Similar Changes

Request Form for Decisions

LR1.15/2:

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Pan American Grain Company, Inc. and Bulk Terminal Operations, Inc. (24--CA--4957; 281 NLRB No. 19), San Juan, Puerto Rico 18 August 1986. The Board affirmed an administrative law judge decision that Pan American--an importer of grain and feed--and Bulk Terminal, which provided stevedoring work for the former, constitute a single employer that violated the Act by unilaterally contracting out the stevedoring work without notifying or bargaining with Longshoremen Local 1740.

The case arose when the employer decided in March 1984 to stop requesting stevedores from ILA Local 1740 and to have stevedores obtained from ILA Local 1575 unload Pan American cargoes. The purpose was to save on labor costs by using smaller union gangs, the judge found. The method was to contract out, on a cost-plus basis, the Pan American stevedoring work to Overseas Shipping, a new stevedoring company.

In finding a violation, the judge relied on Otis Elevator Co., 269 NLRB 891, concluding that the employer decision to contract out was a mandatory subject of bargaining because it turned on labor costs and was amenable to resolution through the bargaining process.

In agreeing Member Babson stated that the judge's conclusion is consistent with the Supreme Court opinion in First National Maintenance and with any of the views expressed by the Board in Otis Elevator.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by ILA Local 1740; complaint alleged violation of Act's Section 8(a)(5), (3) and (1). Hearing at Hato Rey, Puerto Rico on 29 April and 20--23 May 1985. Adm. Law Judge Marion C. Ladwig's decision issued 3 December 1985.

* * *

Laborers Local 225 and Laborers District Council of Chicago (13--CB--10957; 281 NLRB No. 21), Chicago, Ill. 19 August. The union was found guilty of violating the Act by demanding to impasse that charging party National Wrecking Company and/or Chicago Building Wreckers Association agree to change terms of the parties' current collective-bargaining agreement by increasing pension fund contributions and by paying a special wage rate to workers; and by picketing in furtherance of those bargaining demands.

The unfair labor practice findings were made by an administrative law judge whose decision the Board adopted.

The union respondents excepted only to the wording of the judge's recommended order and not to his findings or conclusions.

The conclusions of law were neither admitted nor denied and as such, the judge noted, are deemed admitted under Board rules and regulations.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by National Wrecking Company; complaint alleged violation of Act's Section 8(b)(3). Hearing at Chicago on 30 September 1985. Adm. Law Judge Thomas R. Wilks' decision issued 5 March 1986.

* * *

Carpenters Local 1243 (Northern Alaska Associated General Contractors) (19--CB--4982, 5006; 281 NLRB No. 15), Fairbanks, Alaska 19 August. Dismissing the complaint against the union, the Board agreed with an administrative law judge that the dispatch to jobs on Alaska's North Slope of seven persons as stewards and two persons as foremen, all of whom were travelers from Indiana, signed to list 3 of the union out-of-work list, did not reflect an arbitrary, invidious and discriminatory operation of the union's exclusive hiring hall, or otherwise violate the Act.

In agreeing, Chairman Dotson did not rely on certain cases cited by the judge but found, under the circumstances of this case, the union had legitmate and substantial justification for referring as stewards the Indiana millwrights even though other millwrights were higher on the out-of-work lists.

There were numerous jurisdictional agreements and disputes with other crafts and working conditions peculiar to the North Slope area requiring the presence of qualified and experienced stewards, the Chairman noted.

Qualified list 1 millwrights were passing up referrals, thus forcing the union to appoint millwrights from lists 2 and 3 whose qualifications and experience were unknown to the union, Chairman Dotson pointed out. In view of this "critical situation," the union was substantially justified in designating as stewards the Indiana millwrights whom the union knew had the required experience and qualifications, Chairman Dotson said.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(b)(1)(A) and Section 8(b)(2). Hearing at Fairbanks, Alaska on 4 December 1984, 21-24 January 1985, 26-28 March 1985 and 21-23 May 1985. Adm. Law Judge Michael D. Stevenson's decision issued 24 September 1985.

* * *

Dresser Industries, Inc. (39--CA--2804; 281 NLRB No. 23), Stratford, Conn. 21 August. Upholding the decision of an administrative law judge, the Board concluded that the employer illegally threatened to transfer Michael Minutolo, a 30-year employee with Dresser Industries, to another department because he filed grievances under Teamsters Local 145's collective-bargaining agreement with the employer.

On two consecutive work days in October 1985, Minutolo filed two grievances against Anthony Farrar, a supervisor less than a week in the department where Minutolo worked, charging serious allegations of supervisory misconduct.

Farrar admitted telling Minutolo that he would recommend transfer of the employee, but the employer asserted this comment had nothing to do with grievances but rather to Minutolo's poor performance during Farrar's one-week supervision of him.

Disagreeing, the judge concluded that the supervisor had sought to intimidate Minutolo into stopping the filing of grievances.

The judge also found that Minutolo had been the victim of illegal employer interrogation when he was summoned into the private office of a high-ranking management official and questioned about his union activities.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1). Hearing at Hartford, Conn. on 14 February 1986. Adm. Law Judge Steven Davis' decision issued 30 June 1986.

* * *

Aero Quality Plating Co., Inc. (32--CA--7552; 281 NLRB No. 24), Oakland, Calif. 22 August 1986. Absent good cause being shown for the employer failure to file a timely answer to the complaint, the Board granted summary judgment and found the employer had violated the Act by discharging employees for having engaged in a strike and by informing them that they had no future employment or benefits.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Metal Polishers Local 128; complaint alleged violation of Act's Section 8(a)(1) and (3). General Counsel's motion for summary judgment filed 25 February 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

A/Z Electric, Inc. (IBEW Local 35), Ledyard, Conn. 18 August. 39-CA-2722, 39-RC-632; JD(NY)--71--86, Harold B. Lawrence, Adm. Law Judge

Ambulette Transportation Service Corp. (Teamsters Local 810), Brooklyn, N.Y. 20 August. 29-CA-12110; JD(NY)--70--86, James F. Morton, Adm. Law Judge

BMD Sportswear Corp. and Suzan Knitwear Corp. (Ladies Garment Workers, Local 155), Queens, N.Y. 21 August. 29-CA-11824-1,11824-2, et al.; JD(NY)--73--86, Steven Davis, Adm. Law Judge

December 12, Inc.; December 12, Inc. of Nevada (Individual), Los Angeles, Calif. 11 August. 31--CA--12661; JD(SF)--096--86, Earldean V.S. Robbins, Adm. Law Judge

Finlay Brothers Co., Inc. (Individual), Bloomfield, Conn. 20 August. 39-CA-2910; JD(NY)--72--86, Harold B. Lawrence, Adm. Law Judge

Kolman Division of Athey Products Corp. (Allied Industrial Workers of America), Sioux Falls, South Dakota 19 August. 18--CA--9609; JD--226--86, Leonard M. Wagman, Adm. Law Judge

Northwest Pipe & Casing Co. (Boilermakers Local 72), Clackamas, Oregon 8 August. 36--CA--5183; JD(SF)--093--86, Clifford H. Anderson, Adm. Law Judge

Ryder Truck Rental, Inc. (Teamsters Local 175), Parkersburg, West Virginia 22 August. 9--CA--22993; JD--229--86, James L. Rose, Adm. Law Judge

Spring Valley Farms, Inc. (UBC, Southern Council of Industrial Workers), Oxford, Alabama 18 August. 10-CA-21582; JD(ATL)--54--86, Hutton S. Brandon, Adm. Law Judge

Sheet Metal Workers Local 40 (Individual), Meriden, Conn. 20 August. 39-CB-734, 775-1; JD(NY)--75--86, Harold B. Lawrence, Adm. Law Judge

U.S. Marine Corp. and Bayliner Marine Corp. (Industrial Workers Local 879), Hartford, Wisc. 22 August. 30--CA--8206, 8404, 8537; JD--182--86, George F. McInerny, Adm. Law Judge

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 86-8 14 August 1986

TO: All Regional Directors, Officers-In-Charge, and Resident Officers

FROM: Rosemary M. Collyer, General Counsel

SUBJECT: Guideline Memorandum Concerning Continuity of Bargaining Representative after Affiliations, Mergers and Similar Changes

In its recent decision in Seattle-First National Bank, 1/ the Supreme Court held that the Board could not require a union to allow non-members to participate in union affiliation votes as a condition of amending an outstanding certification or issuing a bargaining order on behalf of the newly affiliated union. Thus, assuming arguendo that the affiliation does not result in the creation of a different entity, the employer is obligated to bargain with the newly-affiliated union even if non-members did not participate in the affiliation vote. On the other hand, "[i]f the organizational changes accompanying affiliation [are] substantial enough to create a different entity, the affiliation raise[s] a 'question concerning representation', which [can] only be resolved through the Board's election procedure." 2/

The determination of whether an affiliation results in the creation of a different entity is called a "continuity" determination. 3/ The Court clearly stated that the Board possesses the statutory authority to make the "continuity" determination. 4/ This memorandum sets forth the relevant precedents to assist Regional Offices in making this determination.5/

1/ NLRB v. Financial Institution Employees, Local 1182 (Seattle-First National Bank), ____U.S.____, 121 LRRM 2741 (1986).

2/ Seattle-First National Bank, supra at 2745.

3/ Id. at n. 7 and accompanying text.

4/ Id. at 2749, n. 13.

5/ Although Seattle-First National dealt with an affiliation, we believe that the "continuity" determination must be made in cases involving other organizational changes as well. These include: mergers or affiliations between international unions, disaffiliations of locals from international unions, the merger of one local union into another, the creation of a new local union from the amalgamation of several locals or by severing a

The Board examines the nature of the collective bargaining representative after an organizational change to determine whether the change raises a question concerning representation ("qcr") requiring a Board-conducted election. 6/ The Board has found a qcr where a certified union completely lost its identity through a reorganization 7/ or where some portion of the old union survived as a functioning viable entity and opposed the change. 8/ On the other hand, not every organizational change will "result in displacement of the employer-bargaining representative relationship." Canton Sign Co., 174 NLRB 906, 909 (1969), enf. denied on other grounds, 457 F.2d 832 (6th Cir. 1972). Thus, in general, an affiliation between international unions that results in little more than a name change for the locals has not been considered to raise a qcr. 9/

Between the extremes of total loss of identity and a mere name change lies the great bulk of cases involving organizational changes that may or may not be sufficient to raise a qcr. In general, the Board considers whether there have been changes "in the rights and obligations of the union's leadership and membership, and in the relationships between the putative bargaining agent, its affiliate, and the employer," J. Ray McDermott & Co. v. NLRB, 571 F.2d 850, 857 (5th Cir. 1978), cert. denied 439 U.S. 893 (1978). In this inquiry, "the party claiming irregularity or dissimilarity of bargaining agents [has] the

---

portion of another local. All such changes are referred to herein as organizational changes.

6/ The Board consistently has applied the same standards in representation proceedings, generally involving amendments to certifications, as in unfair labor practice cases alleging an employer's refusal to bargain with a "new" union. Independent Drug Store Owners, 211 NLRB 701, n. 2 (1974), enf. per curiam sub nom. Retail Clerks, Local 428 v. NLRB, 528 F.2d 1225 (9th Cir. 1975).

7/ See, e.g., Gas Service Co., 213 NLRB 932 (1974); Independent Drug Store Owners, supra; Gulf Oil Corp., 135 NLRB 184 (1962).

8/ See, e.g., Baldor Electric Co., 258 NLRB 1325 (1981); Illinois Grain Corp., 222 NLRB 495 (1976); Factory Services, Inc., 193 NLRB 722 (1971); Missouri Beef Packers, Inc., 175 NLRB 1100 (1969).

9/ See, e.g., Knapp-Sherrill Co., 263 NLRB 396 (1982); Texas Plastics, Inc., 263 NLRB 394 (1982); Warehouse Groceries Management, Inc., 254 NLRB 252 (1981), enfd. 111 LRRM 2137 (11th Cir. 1982); Aurelia Osborn Fox Memorial Hospital, 247 NLRB 356 (1980); American Enka Co., 231 NLRB 1335 (1977); Pearl Bookbinding Co., 206 NLRB 834 (1973), enfd. 577 F.2d 1108 (1st Cir. 1975).

affirmative obligation of supporting its claim." Insulfab Plastics, Inc., 274 NLRB No. 126, ALJD, sl. op. at 11 (1985), enfd. ____F.2d____, 122 LRRM 2105 (1st Cir. 1986). As will be more fully discussed below, the Board determines whether there have been significant changes in the following: officers, staff, internal structure, daily operations, dues structure and constitution and by-laws. Most importantly, the Board considers whether the bargaining representative has preserved its previous level of autonomy by, for example, continuing to conduct its own contract negotiations and strike votes and by retaining its assets and resources. Finally, the Board considers whether the post-change entity is willing to assume the contractual commitments of its predecessor. 10/ If these factors establish substantial continuity, the Board will find the union to be the bargaining representative even if the union is part of a much larger entity after the organizational change. 11/

Following is a breakdown of some of the factors relied upon most often by the Board in assessing whether there has been substantial continuity in the bargaining representative after an organizational change. Clearly, no one factor is dispositive of the issue. Indeed, the Board has stressed different considerations at various times in the past and appears to examine the "totality of

---

10/ Quemetco, Inc., 226 NLRB 1398, 1399 (1976); National Carbon Co., 116 NLRB 488, 500-01 (1956), enfd. per curiam 244 F.2d 672 (6th Cir. 1957). For a general discussion of factors considered by the Board, see NLRB v. Insulfab Plastics, Inc., 122 LRRM at 2109; NLRB v. Pearl Bookbinding, 517 F.2d 1108, 1111-12 (1st Cir. 1975); Ventura County Star-Free Press, 279 NLRB No. 64, ALJD, sl. op. at 14-15 and cases cited therein (1986); National Carbon Co., 116 NLRB 488 (1956), enfd. per curiam 244 F.2d 627 (6th Cir. 1957).

11/ See, e.g., Insulfab Plastics, supra, 274 NLRB No. 126, ALJD at 15; Aurelia Osborn Fox Memorial Hospital, supra, 247 NLRB at 359; New Orleans Public Service, Inc., 237 NLRB 919, 921 n. 11 (1978); Kentucky Power Co., 213 NLRB 730, 731 (1974); Canton Sign Co., supra, 174 NLRB at 908-09; Montgomery Ward Co., 188 NLRB 551 (1971). In contrast, the relative size and economic power of the two entities has been a major factor cited by the Third Circuit when denying enforcement to Board orders requiring employers to bargain with newly affiliated unions. American Bridge Division, U.S. Steel Corp. v. NLRB, 457 F.2d 660 (3rd Cir. 1972), denying enf. to 185 NLRB 669 (1970); NLRB v. Bernard Gloekler North East Co., 540 F.2d 197 (3rd Cir. 1976), denying enf. to 217 NLRB 626 (1975); Sun Oil Co. of Pa. v. NLRB 576 F.2d 553 (3rd Cir. 1978), denying enf. to 228 NLRB 1063 (1977) and 228 NLRB 1072 (1977). See also Amoco Production Co., 239 NLRB 1195, 1198 (1979) (Member Penello, dissenting).

a situation" rather than "the presence or absence of certain cited criteria." 12/ All that can be said is that if few or none of these factors are present, it is unlikely that the Board will find substantial continuity, unless the employer has acquiesced in the change. 13/

Officers and Staff

Among the primary considerations in assessing continuity is whether officers and administrative personnel have been retained. 14/ The fact that the officers are retained in a somewhat different capacity will not necessarily mean that this element is not satisfied if the officers maintain the same or similar relationship to their unit. Thus, in William B. Tanner Co, 212 NLRB 566 (1974), enf. denied per curiam 517 F.2d 982 (6th Cir. 1975), the Board noted that the local remained a semiautononous union after its merger into another local, with the same officers and the same agents to administer its contracts. 15/ Similarly, in Newspapers, Inc., 210 NLRB 8 (1974), enfd. 575 F.2d 334 (5th Cir. 1975), the officers of the division servicing the unit in question remained the same even though none of the officers served in that capacity in the new local union. In National Carbon Co., 116 NLRB 488 (1956), enfd. per curiam 244 F.2d 672 (6th Cir. 1957), both of the merged locals maintained equal representation after the merger in terms of officers, executive board members and district directors.

Continuity in the administration of collective-bargaining agreements is also extremely important. Thus, in McKesson Wine & Spirits Co., 232 NLRB 210 (1977), two of the officers of the union left the union after the change. Notwithstanding this, the Board found the requisite continuity based in large part on the fact that the remaining officials continued to negotiate agreements and

---

12/ Yates Industries, Inc., 264 NLRB 1237, 1250 (1982).

13/ See, e.g., Ventura County Star-Free Press, supra; (Employer estopped from challenging affiliation based on post-affiliation bargaining). Accord: Knapp-Sherrill Co., supra.

14/ See, e.g., Aurelia Osborn Fox Memorial Hospital, supra; Newspapers, Inc., 210 NLRB 8, 9 (1974), enfd. 515 F.2d 334 (5th Cir. 1975); Gasland Inc., 239 NLRB 611 (1978); New Orleans Public Service, Inc., supra, 237 NLRB at 921. Cf. Gas Service, Inc., supra; Independent Drug Store Owners, supra (no continuity found, based, inter alia, on fact that none of the officers was retained). But see Quemetco, Inc., supra; Canton, Sign, supra (continuity found despite failure to retain officers and staff).

15/ See also New Orleans Public Service Inc., supra.

process grievances. 16/ In Montgomery Ward & Co., 188 NLRB 581 (1971), it was considered significant that, after the merger of the bargaining representative into a much larger union, the same business agent continued to service the bargaining units exactly as he had before the merger, and the business agent served on the executive board of the post-merger union.

Constitution and Bylaws

Where the constitution and/or bylaws governing the union after reorganization are the same as before the change, the Board notes that fact as a consideration pointing to substantial continuity. 17/ On the other hand, the Board often has found continuity despite a finding that the constitution and bylaws have been completely supplanted by those of the new entity. 18/ Accordingly, although this factor is relevant in establishing continuity, the absence of the factor does not establish a lack of continuity.

Dues Structure

Another factor that is often noted but is not dispositive of the continuity issue is the retention of the dues system. Thus, although the Board has pointed to the same dues payments as significant, 19/ it has not found a lack of continuity where there

---

16/ See also Aurelia Osborn Fox Memorial Hospital, supra; Kentucky Power Co., supra, 213 NLRB at 731.

17/ See, e.g., Insulfab Plastics, supra; Texas Plastics, supra; McKesson Wine & Spirits, supra; Pearl Bookbinding Co., supra, 206 NLRB at 836. See also Warehouse Groceries Management, Inc., supra, 254 NLRB at 256 (new international allowed some discrepancies in locals' constitutions and bylaws).

18/ New Orleans Public Service, supra; Ocean Systems, 223 NLRB 857, 859 (1976) enfd. sub nom. J. Ray McDermott & Co. v. NLRB, 571 F.2d 850 (5th Cir. 1978), cert. denied 439 U.S. 893 (1978); East Ohio Gas Co., 140 NLRB 1269, 1271 (1963); Lloyd A. Fry Roofing Co., 118 NLRB 587 (1957); National Carbon Co., supra.

19/ Insulfab Plastics, supra; Texas Plastics , supra; Aurelia Osborn Fox Memorial Hospital, supra; Ocean Systems, supra; McKesson Wine & Spirits, supra.

has been a dues increase 20/ or where the union loses control of the dues money after the change. 21/

Assets and Resources

Retention by the bargaining representative of the resources owned by it prior to reorganization is also considered significant by the Board, 22/ but not dispositive. 23/

Autonomy

In general, the Board has not found continuity unless it could establish that the original bargaining representative exercised substantial autonomy in its operations after the change. 24/ In cases where the Board has found no continuity, the Board points to a "total loss of identity" on the part of the union undergoing the change. 25/ The inquiry into the degree of autonomy covers such factors as control over contract negotiations and grievance processing, independence in calling strikes and allocating strike benefits, and the authority to ratify agreements. It also includes such factors as control over resources and establishment of dues and fees. 26/ As stated by the Board in Montgomery Ward & Co., supra, in which a small amalgamated local merged with a larger amalgamated local of the same international, "employee members of each bargaining unit . . . continue to exercise significant control over their own destiny. . . . " 188 NLRB at 552. It was such continuing "local autonomy" that caused the First Circuit to enforce the Board's bargaining order in

---

20/ Knapp-Sherrill Co., supra; New Orleans Public Service, supra; Sun Oil Co., 228 NLRB 1063 (1977), enf. denied 576 F.2d 553 (3rd Cir. 1978).

21/ Quemetco, supra; Canton Sign Co., supra.

22/ See, e.g., Insulfab Plastics, supra; Aurelia Osborn Fox Hospital, supra; Pearl Bookbinding, supra.

23/ Texas Plastics, supra; Montgomery Ward & Co., supra; Canton Sign, supra; Lloyd A. Fry, supra; National Carbon Co., supra.

24/ For a general discussion of the importance of unit autonomy, see Retail Store Employees Union, Local 428 v. NLRB, 528 F.2d at 1228; Gasland, Inc., 239 NLRB at 611-12.

25/ See cases cited at note 7 supra.

26/ See, e.g., Insulfab Plastics, supra; Aurelia Osborn Fox Memorial Hospital, supra; Gasland, Inc., supra.

Insulfab Plastics, despite the structural changes and increased obligations incurred by the union. 27/ Often autonomy is retained because the bargaining representative has become a quasi-independent entity within the larger union after reorganization. 28/ Indeed, in Kentucky Power Co., 213 NLRB 730, 731 (1974), the Board noted that the unit employees arguably had more autonomy after the merger than before because they had acquired separate representation on the new local's executive board.

Concededly, the Board has on occasion found the requisite continuity even where the old entity retained no independent identity after a merger 29/ or affiliation 30/ In these cases, there was an overwhelming showing of support by unit employees for the new representative. 31/ The reasoning of these cases is open to question inasmuch as the issue of whether the union is a different entity is analytically distinct from the issue of whether the employees support the new entity. Phrased differently, if the change results in a qcr, the employer may be entitled to a Board election, even if the new entity has majority support. 32/

Submissions to Advice

If it is clear, under Board law, that continuity can be shown or that it cannot be shown, the Region should proceed accordingly. Otherwise, the case should be submitted to Advice.

Other Matters

Assuming arguendo that the change does not result in the creation of a new and different entity, there may nonetheless be issues concerning a lack of due process in accomplishing the change. In Seattle-First, the Supreme Court held only that the union was not required to allow non-members to vote concerning the change. Although the Court's opinion suggests that such a change, not resulting in a qcr, is a wholly internal matter, the Court does

---

27/ NLRB v. Insulfab Plastics, Inc., 122 LRRM at 2109.

28/ See, e.g., American Enka Co., supra, 231 NLRB at 1337; William B. Tanner Co., supra; Newspapers, Inc., supra.

29/ Canton Sign, supra.

30/ Quemetco, Inc., supra.

31/ Compare Safway Steel Scaffolds Co. of Georgia, 173 NLRB 311 (1968) with Rinker Materials Corp., 162 NLRB 1688, (1967).

32/ See Linden Lumber Div., Summer & Co. v. NLRB, 419 U.S. 301 (1974).

not resolve the issue concerning the impact of a lack of due process in accomplishing the change. Conceivably, a change that was accomplished in complete defiance of the wishes of unit employees could lead to a situation where the employer has a good-faith doubt that the union, after the change, continues to have the support of a majority of the employees. Similarly, such a change could be accomplished in a manner inconsistent with the duty to represent fairly. All issues concerning alleged procedural irregularities in the accomplishment of the change should be submitted to Advice.

Rosemary M. Collyer
Rosemary M. Collyer
General Counsel

cc: NLRBU

Distribution:

Washington - Special
Regional - All Professional Employees

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2032

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

27 - 31 AUGUST 1986 (W-2032)

NEWARK PUBLIC LIBRARY

SEP 15 1986

U. S. GOVT. PUBS.
DEPOSITORY

CASES SUMMARIZED

Amscot Coal	Hazelton, Penna.	2
Best Western Motor Inn	Mount Vernon, Wash.	2
Construction and General Laborers Local 1334 (Western Sign Corp.)	Butte, Mont.	3
Standard Products Co., Rocky Mount Division	Rocky Mount, N.C.	1
Watson Industries Division	Jamestown, N.Y.	1

OTHER CONTENTS

List of Decisions of Administrative Law Judges 3

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

LR 1.15/2:

Watson Industries Division (3--CA--12923; 281 NLRB No. 22) Jamestown, N.Y. 26 August. On motion for summary judgment, the Board concluded that the employer violated the Act by failing, between 10 April and 20 August 1985, to make contributions for its unit employees' medical/hospitalization benefits and failing to prove medical/hospitalization insurance coverage for unit employees, without affording Machinists Local 1895 an opportunity to bargain about the matter.

The employer had admitted the unilateral action, but it argued that it had received permission from a bankruptcy court on 20 August 1985 to reject the collective-bargaining agreement then in effect, and that since that date the parties have negotiated on issues including health insurance coverage.

The Board however noted that the complaint did not allege any unlawful refusal to bargain after 20 August 1985 and, in any event, the permission granted by the bankruptcy court to reject the existing agreement on 20 August 1985 did not extinguish employer responsibilities under the Act as they existed prior to that date.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Machinists Local 1895; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 12 February 1986.

* * *

Standard Products Co., Rocky Mount Division (11--CA--11242, 11--CA--11429, 11--RC--5222; 281 NLRB No. 18) Rocky Mount, N.C. 26 August. The Board concluded that "egregious and widespread" misconduct by the employer warranted issuance of a broad remedial order as well as direction of a second election to determine if employees of the molded weather stripping manufacturer desire to be represented by the Clothing and Textile Workers.

The Board specifically noted that the following acts of the employer, constituting independent violations of the Act, occurred during the critical election period and were the basis of timely filed election objections: interrogations, threats of plant closure, threats of discharge, and solicitation of an employee to abandon the union.

One employee, Marvin Graham, was found to have been discriminatorily terminated because he refused to agree to revoke and retrieve his authorization card from the union or to attempt to do so.

The Board conclusion that the employer did not meet its Wright Line burden of showing that it would have discharged Graham even absent his union activity was based on a supervisor's statement to Graham that he would not be fired if he would get back his union authorization card.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Clothing and Textile Workers; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Wilson on 10, 11, 12 and 13 December 1984. Adm. Law Judge Philip P. McLeod's decision issued 11 June 1985.

* * *

Best Western Motor Inn (19--CA--17628; 281 NLRB No. 26) Mount Vernon, Wash. 29 August. The Board sustained an administrative law judge's finding that the employer violated the Act by discharging Freida and Jerry Jones, both supervisors, because they refused to comply with an unlawful employer request of surveillance to gather information about the union activities of employees.

This decision in no way conflicts with settled law that an employer can require supervisors to engage in unlawful union campaign activity on behalf of the employer and can discipline or discharge a supervisor for refusing to engage in such activity, the Board stated.

Furthermore, the Board noted, the instant case did not present a situation where the employer lawfully terminates a supervisor whose conduct has engendered employee disaffection and related union activity.

Member Johansen found the instant case, where the supervisors were discharged because of their refusal to commit unfair labor practices, distinguishable from Resistance Technology, Inc., 280 NLRB No. 117 (June 24, 1986).

Member Babson found it unnecessary to rely on the respondent's hiring of Paul Touchette to replace the Joneses as evidence of the respondent's unlawful motive in discharging the Joneses.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(a)(1). Hearing at Seattle on 1, 2 and 3 October 1985. Adm. Law Judge Joan Weider's decision issued 6 May 1986.

* * *

Amscot Coal (4--CA--13583-1, et. al.; 281 NLRB No. 27) Hazelton, Penna. 28 August. Affirming the decision of an administrative law judge, the Board concluded that the employer as successor to Lattimer Associates, a Joint Venture, violated its bargaining obligations toward the United Mine Workers, bargaining agent since 1980 of the firm's production and maintenance workers.

The judge found that the union had made a valid demand for recognition and bargaining on 8 March 1983, which demand the employer illegally refused. Amscot Coal further violated the Act, the judge determined, by unilaterally announcing and implementing new wage rates and a cash bonus incentive system, and by refusing to provide the union with requested information relating to the legal ownership and management of the respondent.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Mine Workers District 25; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing in Hazelton on 22 May 1984. Adm. Law Judge John H. West's decision issued 16 August 1984.

* * *

Construction and General Laborers Local 1334 (Western Sign Corp.) (19--CB--4893; 281 NLRB No. 29) Butte, Mont. 28 August. As recommended by an administrative law judge, the Board dismissed allegations that the union illegally refused since 4 April 1983 to refer William McKernan, pursuant to exclusive hiring hall rules, to employment with employers who are signatory to collective-bargaining agreements with the union.

Evidence revealed that the union had operated its hiring hall with objective criteria during the times relevant, the judge remarked in dismissing.

While finding that the General Counsel established a prima facie case with regard to those instances where the union dispatched a person whose name was below McKernan's name on the out-of-work list, the judge also concluded that the union had presented evidence which rebutted the General Counsel's case and which explained the basis for the referral of those persons.

The judge reviewed several examples. One employer had requested a trainee; McKernan was not a trainee. Another situation involved request of an employee by name, another pertained to recall of a laid-off employee by his employer, in another instance an employer informed the union it would not accept McKernan, and in several situations the union was unable to contact McKernan by telephone, the judge pointed out.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Butte on 27 and 28 March 1984. Adm. Law Judge Roger B. Holmes' decision issued 20 August 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Livermore Joe's, Inc. (Hotel and Restaurant Employees Local 50), Livermore, Calif. 21 August. 32--CA--7543; JD(SF)--103--86, Roger B. Holmes, Adm. Law Judge

Taylor Bus Services, Inc. (Teamsters Local 315), Concord, Calif. 19 August. 32--CA--7223; JD(SF)--99--86, Timothy D. Nelson, Adm. Law Judge

A-1 Schmidlin Plumbing & Heating Co. and Schmidlin, Inc. (Electrical Workers (IBEW) Local 1076), Toledo, O. 25 August. 8-CA-18288; JD--228--86, Richard H. Beddow, Jr., Adm. Law Judge

Bali Blinds Midwest, A Marathon Carey-McFall Co./A Division of Marathon Manufacturing Co. (Iron Workers Local 590), Naperville, Ill. 25 August. 13-CA-25783; JD--231--86, Claude R. Wolfe, Adm. Law Judge

Eastern Non-Ferrous Foundries, Inc. (Molders Local 1), Philadelphia, Penna. 26 August. 4-CA-15720; JD-232-86, William A. Gershuny, Adm. Law Judge

Abraham & Straus, A Division of Federated Department Stores, Inc., and Painters Local 1456, (Individual), Brooklyn, N.Y. 26 August. 29-CA-11332, 29-CB-5578; JD(NY)--77--86, Robert T. Snyder, Adm. Law Judge

Achilles Construction Co., Inc. (Ironworkers Local 455), Brooklyn, N.Y. 26 August. 29--CA--12015; JD--230--86, Thomas D. Johnston, Adm. Law Judge

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods (Individuals), Tucson, Ariz. 20 August. 28--CA--8148, et. al.; JD(SF)--101--86, James S. Jenson, Adm. Law Judge

Construction and General Laborers Local 304, Laborers International Union of North America (Herring & Worley, Inc.), Oakland, Calif. 19 August. 32--CC--1024-1; JD(SF)--98--86, Richard J. Boyce, Adm. Law Judge

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2033

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

2 - 5 SEPTEMBER 1986 (W-2033)

CASES SUMMARIZED

NEWARK PUBLIC LIBRARY
SEP 24 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

Arizona Portland Cement Co.	Rillito, Ariz.	5
B-Bar-B, Inc.	New Albany, Ind.	3
Bryson Environmental Services, Inc.	Dolomite, Ala.	4
C.J. Krehbiel Co.	Cincinnati, O.	2
Inacomp America, Inc.	Troy, Mich.	3
Link Manufacturing Co.	Oak Park, Mich.	4
River Walk Manor, Inc.	Salisbury, Md.	2
Teamsters Local 439	Manteca, Calif.	1
The Idaho Statesman	Boise, Idaho	1
U.S. Postal Service	Southfield, Mich.	2
Value Line Co.	Arkadelphia, Ark.	2

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

LR 1.15/2:

Teamsters Local 439 (32--CB--2068; 281 NLRB No. 37) Manteca, Calif. 29 August. Sustaining the decision of an administrative law judge, the Board concluded that the union violated the Act by including as part of the transfer-of-membership obligation of Melvin Leandro III a building assessment fee and a "fair share" fee for his first month of employment and by causing Shippers Imperial, under a union-security provision, to discharge Leandro for failure to pay the total amount of this transfer-of-membership obligation.

The building assessment fee charged Leandro did not fall within the definition of "periodic dues" as that term is used in the Act, the judge held.

The judge further found that the union did not afford Leandro the statutory grace period on his membership obligation when it charged him a "fair share" fee for the month of July 1984, the date when he began his employment with Shippers.

The judge concluded that the union engaged in unlawful enforcement of its union-security clause against Leandro.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A) and (2). Hearing at Manteca on 16 September 1985. Adm. Law Judge Gordon J. Myatt's decision issued 15 May 1986.

* * *

The Idaho Statesman (19--CA--17281, et al.; 281 NLRB No. 41) Boise, Idaho. 29 August. Agreeing with an administrative law judge, the Board decided that the newspaper publisher violated the Act by bargaining to impasse on two separate occasions on a change in the bargaining unit's scope as a condition for a new collective-bargaining agreement with Typographical Union Local 271.

The employer, it was found, also violated the Act by unilaterally changing the union's jurisdiction over mailroom work from all mailroom work performed within the plant or in any building leased, owned, or operated by respondent, to all mailroom work performed within the mailroom, by consolidating the "A" and "B" classifications into the helper classification, and by setting the wages and other terms and conditions of helper employment pursuant to company policy.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Typographical Union No. 271; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Boise on 13 February 1986. Adm. Law Judge Michael D. Stevenson's decision issued 28 April 1986.

* * *

River Walk Manor, Inc. (5--CA--17570; 281 NLRB No. 25) Salisbury, Md. 29 August. The employer violated the Act by refusing since September 1985 to bargain with District 1199E, National Union of Health Care Employees, certified representative of service and maintenance employees, the Board found on motion for summary judgment.

The employer has not raised any issue that is properly litigable in this unfair labor practice proceeding, the Board decided.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Hospital Employees District 1199-E; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 14 January 1986.

* * *

Value Line Company (26--CA--11451; 281 NLRB No. 31) Arkadelphia, Ark. 29 August. Absent good cause being shown for the employer failure to file a timely answer, the Board granted summary judgment and found the employer committed Section 8(a)(5) bargaining violations by refusing to furnish Furniture Workers Local 282 documentation which would support the company assertion that it had paid vacation benefits to certain employees; by refusing to pay vacation benefits to four former employees; and by refusing to abide by terms of a closing agreement which provided for payment of vacation to employees affected by the closing of its Collierville facility.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Furniture Workers Local 282; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 7 March 1986.

* * *

C.J. Krehbiel Company (9--CA--23176; 281 NLRB No. 33) Cincinnati, O. 29 August. Finding the employer raised no issue properly litigable in this unfair labor practice proceeding, the Board granted summary judgment, found illegal the employer refusal since May 1986 to bargain with Graphic Communications Local 508 and issued cease-and-desist and bargaining orders.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Graphic Communications Local 508; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 30 June 1986.

* * *

United States Postal Service (7--CA--24183(P); 281 NLRB No. 32) Southfield, Mich. 29 August. While agreeing with an administrative law judge that the employer illegally bypassed the American Postal Workers Union and unilaterally adjusted Hani Dallou's grievance, the Board concluded, contrary to the judge, that

a cease-and-desist remedy was insufficient to remedy the unfair labor practice.

The Board customarily directs an employer to restore the status quo ante if it has taken unilateral action to an employee's detriment, but it was unclear in this case whether the employer's grievance adjustment was detrimental or beneficial.

The Board therefore ordered status quo ante restoration conditioned on the employee's desire as expressed through his bargaining agent.

If the union elects with concurrence of Dallou to have the previous conditions restored, the employer shall set aside the unilaterally adjusted grievance, reactivate the grievance, and process the grievance in good faith with all due diligence.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Postal Workers Detroit District; complaint alleged violation of Act's Section 8(a)(5). Hearing at Detroit on 18 June 1985. Adm. Law Judge Thomas A. Ricci's decision issued 18 October 1985.

* * *

Inacomp America, Inc. (7--RC--17674; 281 NLRB No. 40) Troy, Mich. 29 August. The Board sustained the challenge to the ballot of Matthew English whose name had appeared on the Norris-Thermador list stipulating the names of employees eligible to vote in the election, but who had voluntarily resigned and was not working for the employer on the date of the election.

Even though English's name was on the Norris-Thermador list, English had notified the employer that he was quitting before the eligibility cutoff date, was not employed by the employer on the election date, and admitted at leaving that he had no intention of returning to work.

Upholding the Norris-Thermador stipulation regarding English's eligibility, the Board ruled, would be contrary to statutory policy encompassed by Section 9(a) of the Act, which does not contemplate voter status being bestowed on individuals who voluntarily have quit their employment.

Having sustained the challenge to English's ballot, which was the determinative ballot, the Board certified Teamsters Local 337 as bargaining agent of a warehouse unit.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

B-Bar-B, Inc. (9--CA--21278; 281 NLRB No. 36) New Albany, Ind. 29 August. The Board affirmed an administrative law judge's decision that the employer did not violate the Act by hiring temporary replacements after it had locked out its union-represented employees.

The Board relied on Harter Equipment, 280 NLRB No. 71, which issued after the judge's decision.

In Harter the Board held that "as a general rule... an employer does not violate Section 8(a)(3) and (1), absent specific proof of antiunion motivation, by using temporary employees in order to engage in business operations during an otherwise lawful lockout, including a lockout for the sole purpose of bringing economic pressure to bear in support of a legitimate bargaining position."

In the instant case, the Board noted, the General Counsel has not proven specific antiunion motivation or any illegality in the lockout itself.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 783; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Louisville on 30 May 1985. Adm. Law Judge Russell M. King, Jr.'s decision issued 30 August 1985.

* * *

Bryson Environmental Services, Inc. (10--CA--21464; 281 NLRB No. 39) Dolomite, Ala. 29 August. Affirming the decision of an administrative law judge, the Board concluded that the employer illegally refused to rehire James King on 3 January 1986 because he had filed unfair labor practice charges against the employer.

The finding of violation was based on testimony credited by the judge, especially that of discriminatee King. King had stated that he offered to drop out of school and withdraw his outstanding unfair labor practice charge if the employer would rehire him.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Steelworkers; complaint alleged violation of Act's Section 8(a)(1) and (4). Hearing at Birmingham on 8 April 1986. Adm. Law Judge Howard I. Grossman's decision issued 11 June 1986.

* * *

Link Manufacturing Co. (7--CA--23912, et al.; 281 NLRB No. 28) Oak Park, Mich. 2 September. The Board sustained an administrative law judge's findings that the employer committed several unfair labor practices in connection with a 1984 organizing effort of the United Auto Workers, and found as well an additional violation in the unlawful creation of an impression of surveillance of employee union activities.

The employer discriminatorily converted the temporary layoff of six employees to permanent layoff so that they would be ineligible to vote in an election held 27 September 1984 and discriminatorily disciplined and suspended James Guthrie for one week because of his union activity, the judge concluded.

Independent acts of unlawful restraint and coercion of employees, as found by the judge, consisted of coercive interrogation, threats of reprisal including discharge and loss of benefits if employees selected a union, promise of benefits if they rejected a union, and attempts to convince employees not to participate in a Board election.

A revised election tally is to be prepared after the Regional Director opens and counts the ballots of two individuals whose voting eligibility had been unsuccessfully challenged by the employer. The initial tally showed a 26-25 vote against the union.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Autoworkers; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Detroit on various dates in April, May and September of 1985. Adm. Law Judge Robert A. Giannasi's decision issued 6 March 1986.

* * *

Arizona Portland Cement Co., division of California Portland Cement Co., division of Calmat (28--CA--8107; 281 NLRB No. 30) Rillito, Ariz. 2 September. The Board affirmed an administrative law judge's finding that the employer violated the Act by refusing to meet and recognize Boilermakers international representative Ernie Lamoureux at second step grievance meetings.

Lamoureux, a former active employee of the employer now on extended leave of absence for union business, has functioned routinely for several years as an authoritative official on the Boilermakers side in its multi-facility bargaining relationship with the employer.

The employer made no claim of disqualification based on Lamoureux's personality or temperament, but rather argued that the international representative's participation at the provincial step two phase of grievance handling would be disruptive and frustrating of overall bargaining objectives. The employer contention, the judge ruled, has no substantiation in fact or law.

The employer also argued that the matter is time-barred under Section 10(b) of the Act which provides a 6-month limitations period for the filing of a charge. Rejecting that argument, the Board found the charge was filed within 25 days of the operative event and thus was timely. Thus, the Board found it unnecessary to pass on the judge's conclusion that the employer refusal to meet with the international representative should be viewed as a continuing violation.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Boilermakers Local Lodge D296; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Phoenix on 4 February 1986. Adm. Law Judge David G. Heilbrun's decision issued 18 April 1986.

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2034

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

8 - 12 SEPTEMBER 1986

(W-2034)

NEWARK PUBLIC LIBRARY

SEP 29 1986

U. S. GOVT. PUBS.
DEPOSITORY 375

CASES SUMMARIZED

Bristol Extended Care	Bristol, Conn.	4
Caesars Palace, et al.	Las Vegas, Nev.	2
Carolina Freight Carriers Corp.	Elkridge, Md.	2
Cite Rite Service, Inc.	Sterling Heights, Mich.	9
Communications Workers Local 1101	New York, N.Y.	3
Golden Fan Inn	Brunswick, Maine	12
Honeyville Grain, Inc.	Los Angeles, Calif.	1
Hyatt Regency	New Orleans, La.	11
International Hat Co.	Piedmont, Mo.	5
J & M Construction, Inc.	Farmington Hills, Mich.	10
Laborers Local 223	Dorchester Lower Mills, Mass.	11
LA-Z-BOY	Dayton, Tenn.	6
Matai, Inc.	Springfield, O.	5
Mohawk Flush Doors, Inc.	Norththumberland, Penna.	5
Northwind Maintenance and Painting Co., Inc.	New York, N.Y.	8
Olive Mechanical Contractors, Inc.	New Haven, Conn.	10

READEX FICHE best copy available

LR 1.15/2:

Pence Construction Co.	Austin, Tex.	8
Polymer Prints, Ltd.	Brooklyn, N.Y.	8
Rapid Armored Truck Corp.	Brooklyn, N.Y.	1
Rosehill Cemetary Association	Linden, N.J.	4
Sabin Co., Inc.	Brooklyn, N.Y.	9
Service Art Co., Inc.	Warren, Mich.	1
Thomas Steel Co.	Lemont, Ill.	7
Unico Replacement Parts, Inc.	Benicia, Calif.	11
Wayside Realty Group Inc. and Georgetown Hotel	Washington, D.C.	6
Woodcliff Lake Manor Nursing	Woodcliff Lake, N.J.	7

OTHER CONTENTS

List of Decisions of Administrative Law Judges 12

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Honeyville Grain, Inc., (21--CA--24651; 281 NLRB No. 62) Los Angeles, Calif. 9 September. Finding the employer raised no issue properly litigable in this unfair labor practice proceeding, the Board granted summary judgment and found unlawful the employer refusal since 16 December 1985 to bargain with Teamsters Local 848 as certified representative of warehouse employees and truck drivers, as well as the employer refusal to provide the union with relevant bargaining information.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Teamsters Local 848; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed on 28 May 1986.

* * *

Service Art Co., Inc., (7--CA--25579; 281 NLRB No. 47) Warren, Mich. 9 September. Absent good cause being shown for the employer failure to file a timely answer to the complaint, the Board granted motion for judgment on the pleadings, concluding that the employer since 6 September 1985 has violated the Act by unilaterally ceasing to make contributions to certain employee fringe benefit funds as required by its collective-bargaining agreement with Cement Masons Local 67.

(Members Johansen, Babson and Stephens particpated.)

Charges filed by Plasterers' Local 67; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 30 May 1986.

* * *

Rapid Armored Truck Corp., (29--CA--7883, et al.; 281 NLRB No. 57) Brooklyn, N.Y. 9 September. The Board agreed with an administrative law judge that the employer did not violate the Act by discharging all its truck driver employees who participated in a strike which began in October 1979.

In agreeing with dismissal of the complaint, the Board noted that under its decision in Wells Fargo Corp., 270 NLRB No. 787, which issued after the judge's decision, the employer, on expiration of its contract with Teamsters Local 820, was under no legal obligation to continue recognizing or to bargain with that labor organization or its alleged successor, Teamsters Local 807, since they are ineligible for certification under Section 9(b)(3) of the Act because of their policy of admitting both guard and nonguard employees to membership.

Thus, the Board concluded, by engaging in a strike to compel the employer to recognize and bargain with Teamsters Local 807, which under Wells Fargo the employer could lawfully refrain from doing, the employees of the employer engaged in unprotected conduct.

Further, the Board concluded, employees engaged in conduct prohibited by Section 8(b)(7)(C) when they picketed to achieve a recognitional objective. For those reasons, the Board concluded, the employer did not violate the Act by refusing to reinstate or by discharging its striking employees.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 807 and individual; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Brooklyn on 24 and 25 August, 18 September and 23 October 1981. Adm. Law Judge Steven Davis' decision issued 15 June 1982.

* * *

Desert Palace, Inc. d/b/a Caesars Palace, et al. (31--CB--5993; 281 NLRB No. 43) Las Vegas, Nevada. 29 August. Upholding an administrative law judge, the Board ordered the union to provide the Nevada Resort Association with copies of selected unpublished arbitration decisions that were deemed relevant and necessary to the processing of grievances.

The case arose when the union refused to furnish the employer with "...copies of all arbitration decisions and awards to which Respondent has been a party, involving facilities located in Clark County, Nevada..." The NRA is the representative for purposes of collective bargaining of resort hotel/casinos in Clark County.

The Board agreed with the employer's contention that the requested decisions are relevant and necessary for the processing of arbitration cases of NRA members. Citing Acme Industrial Co., Pfizer, Inc., and Chesapeake & Potomac Telephone Co., it concluded that "information which aids the arbitral process is relevant and should be provided." However, the panel narrowed the scope of the information sought by the employer to include copies of all unpublished Clark County arbitration decisions and awards involving (1) respondent and the non-NRA member hotel/casinos and (2) respondent and NRA member hotel/casinos where the latter were not represented by the NRA.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Nevada Resort Association; complaint alleged violation of Act's Section 8(b)(3). Hearing at Las Vegas on 3 October 1985. Adm. Law Judge Burton Litvack's decision issued 6 February 1986.

* * *

Carolina Freight Carriers Corp., (5--CA--14097, 5--CA--14320; 281 NLRB No. 69) Elkridge, Md. 10 September. The Board agreed with an administrative law judge's dismissal of two allegations of employer wrongdoing under the Act and his deferral of those allegations to the grievance procedure under the employer contract with Teamsters Local 557.

The issuance of letters of warning to, and the suspension of, charging parties Louis Reuter and Harold Carey, alleged in the complaint as violating Section 8(a)(1) of the Act, have been the subject of grievance arbitration awards and it is appropriate to defer to those awards under Olin Corp., 268 NLRB No. 86, the judge concluded.

The General Counsel had argued that deferral was not appropriate because a joint area committee did not consider whether Reuter and Carey were engaged in concerted activities, an essential element of the statutory issue. The

judge found, however, that the General Counsel failed to establish that, in fact, evidence of the concerted nature of the employees' activities was not before the committee.

Regarding a Section 8(a)(3) discrimination allegation, concerning the employer refusal to permit Reuter to substitute for an absent driver and alleged assignment of fewer layover runs to him, the judge decided that deferral to arbitration under United Technologies Corp., 268 NLRB No. 83, was appropriate. The statutory issues are cognizable under the arbitration provisions of the agreement, and the employer has expressed willingness to arbitrate these disputes, he said.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(a)(3) and (1). Hearing at Baltimore on 8 and 9 November 1982, and 3, 4 and 5 January 1983. Adm. Law Judge Irwin H. Socoloff's decision issued 12 March 1984.

* * *

Communications Workers Local 1101 (New York Telephone Co.) (2--CB--10188; 281 NLRB No. 64) New York, N.Y. 10 September. The Board found that the union illegally maintained a policy of providing employees with dues-checkoff authorizations as the sole means of satisfying their obligations to remit appropriate fees.

An administrative law judge had recommended dismissing this allegation on the basis of union secretary Gregory Tubby's testimony that at least 27 persons remitted their fees directly to the union.

Disagreeing with the judge, the Board found that Tubby's testimony amounted to an acknowledgment that all employees are required to sign a checkoff card. This evidence, combined with the fact that the union's only membership card requires checkoff at the time of joining the union, established a union policy of providing employees with dues-checkoff authorization cards as the sole means of satisfying their obligations to the union, the Board concluded.

The Board in addition remarked that although 27 cash dues payers-- representing a small percentage of the individuals the union represents-- may provide evidence of exceptions to the policy requiring checkoff, this did not rebut the General Counsel's proof that the policy exists.

The Board also found illegal the union imposition of a court-collectible fine of $591.50 on Mark Patterson because he crossed a picket line and worked during a strike.

(Chairman Dotson, and Members Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at New York City on various dates between April and September 1984. Adm. Law Judge D. Barry Morris' decision issued 30 July 1985.

* * *

Bristol Extended Care (39--CA--2812, 39--CA--2813; 281 NLRB No. 67) Bristol, Conn. 10 September. The employer unilaterally decreased the contractual health insurance coverage of its employees without prior notice to or bargaining with the Connecticut State Federation of Teachers, the Board held.

To remedy the violation, the Board ordered restoration of the health insurance coverage retroactive to 1 October 1985.

Absent good cause being shown why motion for summary judgment should not be granted and in light of the employer admission to the allegations in the complaint, the Board granted summary judgment and found the violation.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Connecticut State Federation of Teachers, AFT.; complaint alleged violation of the Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 7 July 1986.

* * *

Rosehill Cemetery Association (22--CA--14273; 281 NLRB No. 66) Linden, N.J. 10 September. The employer, which informed Service Employees Local 365 of its intent to test the union's certification and then refused to bargain committed an unfair labor practice, the Board ruled.

The violator of the Act had raised no issue properly litigable in this unfair labor practice proceeding, the Board held in issuing cease-and-desist and bargaining orders.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Service Employees Local 365; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 14 May 1986.

* * *

Mohawk Flush Doors, Inc. (4--CA--15604; 281 NLRB No. 59) Northumberland, Penna. 10 September. The Board held that the employer illegally refused to bargain with Laborers District Council of Eastern Pennsylvania after the union was certified as bargaining agent of all maintenance employees, group leaders and laborers.

The finding of violation was made on motion for summary judgment, the Board concluding that the employer had raised no issue properly litigable in this unfair labor practice proceeding.

The employer had contended that it should be relieved of its duty to bargain because of the union's alleged connection with "organized crime." The Board found that argument to be without merit when it denied an employer motion to revoke certification.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Laborers; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 5 May 1986.

* * *

Matai Inc. (9--CA--22565, 9--CA--22635; 281 NLRB No. 50) Springfield, O. 8 September. Affirming an administrative law judge, the Board held the employer unlawfully laid off two employees in reprisal for union activity. It also found the employer's non-solicitation, no-distribution rule presumptively invalid for being overly broad and tending to inhibit union activity.

Company supervisors had linked union representation to plant shut-down and loss of jobs; they also stressed the cost of union dues to employees and pointed out "the impotency of unions." Applying the Wright Line causation test, the panel found a prima facie inference of unlawful motivation and rejected the employer's contention that the permanent layoffs of the union activists were the result of a downturn in sales and poor work records.

Citing Our Way, Inc., the Board said the company's no-solicitation rule was overly broad in being "a blanket prohibition against any distribution of literature." It pointed out the rule did not delineate working areas from non-working areas, nor working time from non-working time.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(a)(3) and (1). Hearing at Dayton on 10 and 11 February 1986. Adm. Law Judge Irwin Kaplan's decision issued 27 June 1986.

* * *

International Hat Co., A Wholly-Owned Subsidiary of Interco Inc. (14--CA--16407; 281 NLRB No. 53) Piedmont, Mo. 8 September. In a supplemental decision, the Board affirmed its holding of 28 March 1984 that the employer had unlawfully set the wage rate of an employee at level which substantially decreased his earnings in reprisal for his union activities.

On appeal, the Eighth Circuit found substantial evidence to support the Board's position but remanded the case to determine whether, under NLRB v. Transportation Management Corp., the company's action would have occurred in the absence of the employee's union activities.

The employee filed charges against the company after being informed by the general manager that the company was changing from cutting by the piece to bulk cutting and that he would be paid at the temporary rate of 1.9 cents per cut subject to review. The employee complained this rate was too low to produce an income equal to his previous earnings. The general manager admitted that the new rate would fall short of the company's avowed objective to match or increase the employee's previous income.

The Board concluded: "In view of the respondent's awareness that it was setting (the employee's) rate at too low a level to achieve its professed objective of maintaining his earnings and its failure to take corrective action either before or after its change in method... the respondent has not established that (the employee's) earnings would have occurred in the absence of his union activities."

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

LA-Z-BOY (10--CA--21326; 281 NLRB No. 54) Dayton, Tenn. 8 September. Affirming an administrative law judge, the Board dismissed a complaint by the union that the employer had made unlawful threats regarding loss of wages and benefits, and potential transfers if they selected the union to represent them in bargaining.

> The personnel manager acknowledged telling the employees that '...when you sit down to negotiate or to bargain, that the contract you start with is a blank sheet of paper." Citing Clark Equipment Co., the judge found, and the Board agreed, that the statement did "not appear to have been designed to relay the message that the company would take away wages or benefits if the employees selected union representation, but rather his comments were that existing benefits could be lost as a result of bargaining.'

The panel further held that other statements made by company representatives about employee transfers in connection with union activity "would not reasonably have been viewed as threats and hence do not amount to violations of Section 8(a)(1) of the Act."

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Furniture Workers. Hearing at Dayton on 28 January 1986. Adm. Law Judge William N. Cates' decision issued 7 April 1986.

* * *

Wayside Realty Group Inc. and Georgetown Hotel (5--CA--14675; 281 NLRB No. 45) Washington, D.C. 9 September. The Board affirmed an administrative law judge's conclusion that the employer illegally withdrew recognition of Hotel and Restaurant Employees Local 25 after having agreed to recognize the union if it could demonstrate by a card showing that it represented a majority of unit employees and after the union so demonstrated such a majority.

The Board however reversed a finding of illegal interrogation of one employee, the Board agreeing with the position of the employer that the question of whether the employee was unlawfully interrogated, as found by the judge, was not fully and fairly litigated at the hearing.

Members Babson and Stephens noted that the evidence established that

the union, as of 12 March 1982, had obtained authorization cards from a majority of unit employees, and agreed with the judge that the respondents, on that date, agreed to recognize the union upon its verification that the card signers were on its payroll. They further noted that although the respondents and the union may have subsequently agreed to a private election as another means for determining if the union had majority support, the respondents' decision not to proceed with a private election, as agreed to, rendered the private election agreement a nullity, and left the respondents with the obligation, according to an earlier agreement, to voluntarily recognize and bargain with the union on the basis of a card majority.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 25; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Washington, D.C. on 4 and 5 January 1983.

* * *

Thomas Steel Company (13--CA--24754; 281 NLRB No. 60) Lemont, Ill. 9 September. As recommended by an administrative law judge, the Board dismissed the complaint alleging that the employer in a letter dated 14 December 1984 violated the Act by threatening former employee Jack Brodiske with legal action in retaliation for his alleged protected concerted activities.

Brodiske was discharged after he refused to perform certain welding work on his claim that the work was unsafe. All parties agreed that his discharge was not an issue in this case. At issue was an employer letter threatening Brodiske with legal action unless he ceased "all efforts to interfere with Thomas Steel Company's business relations with its customer and suppliers." The letter was sent after the former employee contacted Nelco Chemical Company seeking information on certain molding products manufactured by Nelco and used at the employer's facility.

In dismissing the complaint, the Board relied solely on the judge's findings that Brodiske's conduct, which prompted the employer to send the letter, was unprotected and that the employer at the time it sent the letter did not know or could not have known of the arguably concerted nature of Brodiske's conduct. Member Johansen relied only on the latter reason.

(Chairman Dotson and Member Johansen and Babson participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1). Hearing at Chicago on 12 August 1985. Adm. Law Judge Michael D. Stevenson's decision issued 14 November 1985.

* * *

Woodcliff Lake Manor Nursing Home, Inc. (22--CA--11676, 22--CB--4718; 281 NLRB No. 58) Woodcliff Lake, N.J. 8 September. The Board adopted the supplemental decision of an administrative law judge that two housekeeping and maintenance employees in question were in fact in the unit and that the General Counsel had not

shown that the union did not represent a majority of the employees on 12 March 1982.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Pence Construction Co. (23-CA-10175; 281 NLRB No. 49) Austin, Tex. 8 September. The Board held that the employer violated the Act by refusing to provide the union with information regarding the existence of what it suspected was a "double breasted" or alter ego operation. Affirming an administrative law judge, the Board concluded the union had established a reasonable, objective basis for its belief that the employer and a non-union company in another city were engaged in nonunion operations within the geographic area covered by the collective bargaining agreement.

The judge stated and the Board agreed that "the obligation to supply a union with requested information extends not only to information for contract negotiations but also to that which is necessary for the informed administration of a collective bargaining agreement."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Carpenters Local 1266; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Austin on 16 April 1986. Adm. Law Judge Lawrence W. Cullen's decision issued 30 June 1986.

* * *

Northwind Maintenance and Painting Co., Inc. (29--CA--11681; 281 NLRB No. 48) New York, N.Y. 8 September. The Board ruled the employer unlawfully laid off nine employees as a result of their interest in joining the union. The employer had attributed the layoffs to a contract cancellation. Payroll records, however, showed that new employees were hired as replacements. Affirming an administrative law judge, the Board concluded the contract cancellation was pretextual, designed to conceal the employer's unlawful motivation.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Service Employees Local 32E; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at New York. Adm. Law Judge James F. Morton's decision issued 24 April 1986.

* * *

Polymer Prints, Ltd. (29--CA--10491, et al.; 281 NLRB No. 68) Brooklyn, N.Y. 10 September. The Board affirmed an administrative law judge's decision that the employer violated Section 8(a)(4) by reducing the work hours of Joel Gervaes and Maxo Toussaint for appearing as witnesses 22 February 1984 to give testimony under the Act and by constructively discharging Toussaint 26 March 1984 for the same reason.

Because of those Section 8(a)(4) unfair labor practice findings, the Board said it need not pass on whether the employer's conduct also violated Section 8(a)(3) which prohibits discrimination based on union membership.

An allegation that the employer laid off four employees on 20 May 1983 to discourage support for General Workers Local 155 was dismissed. The judge found that the General Counsel had not demonstrated that the employer's claim of being in financial straits was a pretext, that the General Counsel in fact failed to present a prima facie case of discrimination and that moreover, even if a prima facie case had been established, the employer came forward with sufficient evidence to rebut any warranted inference of unlawful motivation.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Garment Workers Local 155, and individuals; complaint alleged violation of Act's Section 8(a)(1), (3) and (4). Hearing at Brooklyn. Adm. Law Judge James F. Morton's decision issued 29 April 1985.

* * *

Sabin Company, Inc. (29--CA--12051; 281 NLRB No. 55) Brooklyn, N.Y. 10 September. In view of the employer failure to file an answer to the complaint, the Board granted summary judgment and found that the employer violated the Act by refusing to execute a written contract with Teamsters Local 819 and by refusing to bargain with the union.

The Board ordered the employee to execute a written contract embodying a memorandum agreement reached witht he Union and to bargain with the union upon request.

(Chairman Dotson, and Members Johansen, and Babson particpated.)

Charges filed by Teamsters Local 810; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 23 April 1986.

* * *

Cite Rite Service, Inc. (7--CA--24110; 281 NLRB No. 63) Sterling Heights, Mich. 10 September. The employer violated the Act by refusing to allow Reginald Easley to work the 7 December 1984 weekend and by permanently laying off Easley, the Board held.

Both actions were taken because Easley had complained to various millwrights at a union meeting on 4 December 1984 that the employer was not abiding by certain terms of its collective-bargaining agreement with Carpenters Local 1102, the Board found.

The Board granted motion for default judgment in the absence of good cause being shown for the employer failure to file a timely answer to the complaint.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(3) and (1). General Counsel's motion for summary judgment filed 10 June 1986.

* * *

J & M Construction, Inc. (7--CA--25527; 281 NLRB No. 51) Farmington Hills, Mich. 9 September. Absent good cause being shown for the employer failure to file a timely answer or request for extension of time, the Board granted the General Counsel's motion for default summary judgment.

The Board found that the employer violated the Act by unilaterally ceasing since 1 October 1985 to make payments into fringe benefit funds of the Carpenters District Council of Detroit and failing to file proper fringe benefit reports pursuant to terms of the parties' collective-bargaining agreement.

The employer further violated the Act by refusing to comply with union requests for information necessary to police the fringe benefit clauses in the agreement.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Carpenters District Council of Detroit; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for default summary judgment filed 13 June 1986.

* * *

Olive Mechanical Contractors, Inc. (39--CA--2797; 281 NLRB No. 61) New Haven, Conn. 9 September. Absent exceptions to an administrative law judge's conclusion that the employer violated Section 8(a)(5) of the Act, the Board adopted his decision that the employer illegally refused to bargain with Plumbers Local 349 by such acts as implementing changes in wages, rates of pay and other conditions of employment, refusing to furnish the union with payroll records, and refusing to make contributions to union funds as required by parties' collective bargaining agreement.

The General Counsel excepted only to the judge's failure to include in the order a visitorial clause authorizing the Board, for compliance purposes, to obtain discovery from the respondent under the Federal Rules of Civil Procedure under the supervision of the United States court of appeals enforcing this Order. Under the circumstances of this case, the Board found it unnecessary to include such a clause.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Plumbers Local 349; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Hartford on 6 February 1986. Adm. Law Judge Harold B. Lawrence's decision issued 14 May 1986.

* * *

Laborers Local 223 (C.W.C. Builders, Inc.) (1--CD--758; 281 NLRB No. 56) Dorchester Lower Mills, Mass. 9 September. Employees of P.J. Casey, Inc., represented by Teamsters Local 82, were awarded the work of unloading, transporting, uncrating and placement of appliances, and the disposal of debris at the employer's jobsite in Dorchester Lower Mills.

The Board also held that Laborers Local 223 is not entitled by means proscribed by the Act to force the employer to assign the above disputed work to employees whom it represents.

In determining this dispute, the Board relied on the factors of area practice, employer past practice, and economy and efficiency of operations.

(Members Johansen, Babson and Stephens participated.)

* * *

Unico Replacement Parts, Inc. (20--CA--16849; 281 NLRB No. 46) Benicia, Calif. 8 September. The Board ruled that the employer violated the Act by threatening employees with plant closure and telling them that layoffs were instituted as a result of union grievance activity.

While agreeing with an administrative law judge on those charges, the Board pointed out that contrary to the judge, it did not find a violation in a conversation between the company's foreman and an employee regarding his union activities. The Board concluded the questioning "involving essentially personal concerns," and did not constitute unlawful interrogation. It also disagreed with the judge's finding that an employee's phone call to OSHA was protected activity, since there was not evidence that he had acted in concert with other employees under the Meyers Industries doctrine.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Machinists; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at San Francisco on 25 October 1982. Adm. Law Judge Russell L. Stevens' decision issued 18 January 1983.

* * *

Hyatt Regency (15--CA--9628; 281 NLRB No. 42) New Orleans, La. 29 August. Affirming an administrative law judge, the Board dismissed a complaint by the union that the employer had engaged in bad faith bargaining. It concluded:

> "The facts relied upon by the General Counsel fail to show bad faith on the part of Respondent. An accurate picture of totality of Respondent's conduct shows that it exhibited a willingness to meet and talk with the Union, it offered several proposals, it reviewed and seriously considered the Union's proposals, it made concessions and it has remained willing to engage

in further negotiations with the Union. This totality of conduct does not constitute bad faith bargaining."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Service Employees Local 100; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at New Orleans on 22-26 July, 20-23 August and 30 September - 1 October 1985. Adm. Law Judge Steven M. Charno's decision issued 16 April 1986.

Golden Fan Inn (1--CA--20805, 1--RC--17813; 281 NLRB No. 35), Brunswick, Maine. 29 August. The Board dismissed the union's complaint that an election which it had lost be set aside because the employer allegedly had unlawfully interrogated an employee, threatened employees that unionization would have an adverse effect, and packed the voting unit to defeat the union.

On the interrogation issue, the Board found that an employer's questioning of an employee about a mailing was lawful since the conversation was casual and amicable and could have referred to either a mailing by the union or employer. The employer's comments to employees about three other unionized restaurants' business problems were lawful, the Board held, because they were "lawful statements of fact that did not constitute a threat that the respondent would close or suffer adverse consequence on unionization."

The Board rejected the union's contention that the employer had added the names of ineligible voters to the Excelsior list to dilute the union's support. It found the employer had added employees to perform needed maintenance.

The Board overruled the administrative law judge on those three issues. Dissenting in part from the panel of Chairman Dotson and Member Johansen on the third issue, Member Stephens would have set aside the election on grounds that the employer unlawfully had packed the voting unit, stressing a supervisor's statement that the employer was going to "beef up the payroll."

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Service Employees 254; complaint alleged violation of Act's Section 8(a)(1). Hearing at Bath on 11, 12 and 13 October 1983. Adm. Law Judge Mary Ellen R. Benard's decision issued 14 May 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Independent Stations Co. (Individuals), Breezewood, Penna. 9 September. 6--CA--18786, 18868; JD--235--86, Robert W. Leiner, Adm. Law Judge

The W.G. Diehl Distributing Co. (Teamsters Union No. 348), Akron, O. 9 September. 8--CA--17626-1; JD--243--86, Walter J. Alprin, Adm. Law Judge

Hercules Incorporated (Chemical Workers Local 271), Parlin, N.J. 9 September. 22-CA-14297; JD(NY)--79--86, James F. Morton, Adm. Law Judge

IBEW Local 412, 1613 and 1464 (Kansas City Power & Light Co.), Kansas City, Mo. 9 September. 17--CB--2924, 2925, and 2939; JD--242--86, Richard L. Denison, Adm. Law Judge

Bruderer, Inc. (Individual), Huntsville, Ala. 9 September. 10-CA-21444; JD(ATL)--57--86, Philip P. McLeod, Adm. Law Judge

Reliance Sheet and Strip Co. (Individual), Alameda, Calif. 29 August. 32--CB--2173; JD(SF)--106--86, Richard D. Taplitz, Adm. Law Judge

Raytown United Super, Inc. (Food and Commercial Workers Local 576), Raytown, Mo. 8 September. 17-CA-12943; JD--241--86, Claude R. Wolfe, Adm. Law Judge

Cassidy Cleaning, Inc. (Individual), Bethesda, Md. 10 September. 5--CA--17614; JD--239--86, Walter H. Maloney, Jr., Adm. Law Judge

Delta Gas, Inc., A Subsidiary of Louisiana Energy & Development Corp. (Oil Workers Local 4-447), Homeplace, La. 9 September. 15-CA-9809, 15-RC-7190; JD(ATL)--56--86, J. Pargen Robertson, Adm. Law Judge

Commercial Property Services, Inc. (Service Employees Local 200), Syracuse, N.Y. 10 September. 3--CA--13200, 3--RC--8854; JD(NY)--80--86, D. Barry Morris, Adm. Law Judge

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2035

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

15-19 SEPTEMBER 1986 (W-2035)

NEWARK PUBLIC LIBRARY
OCT 7 1986
U. S. GOVT. PUBS.
DEPOSITORY 326

CASES SUMMARIZED

Avis Rent-A-Car System, Inc.	Philadelphia, Penna.	5
Brink's, Inc.	Dorchester, Mass.	4
Cullum Mechanical Construction, Inc.	Charleston, S.C.	6
Five M Coal Corp.	Phelps, Ky.	1
H. Treffinger Repair Services, Inc.	Camp Hill, Penna.	5
Health Enterprises of America, Inc.	St. Louis, Mo.	8
Hotel & Restaurant Employees Local 19	San Jose, Calif.	4
JCO Food Corp.	Bronx, N.Y.	7
Lamar Industrial Plastics Co.	Sterling Heights, Mich.	1
Mash Transportation	Whiteland, Ind.	3
Operating Engineers Local 501	Las Vegas, Nev.	2
Rappazzo Electric Co., Inc.	Albany, N.Y.	7
Ricks Construction Co.	Bakersfield, Calif.	3
Shrewsbury Motors, Inc.	Shrewsbury, N.J.	2
Transportation by La Mar, Inc.	Chicago, Ill.	3
United Graphics, Inc.	Seattle, Wash.	6

LR 1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 8

List of Publications Available from the NLRB

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Five M Coal Corp. d/b/a Two M (9--CA--22737; 281 NLRB No. 78) Phelps, Ky. 17 September. The Board sustained an administrative law judge's decision that the employer violated the Act by dealing directly with unit employees, soliciting them to enter into individual employment contracts and ignoring an existing contract with United Mine Workers District 30.

The employer, it was also found, further violated the Act by locking out employees from 31 December 1985 through 16 January 1986 after they refused to sign individual contracts that provided lower wage rates, fewer paid holidays and sick days and different medical insurance than provided in the existing contract with the union.

The unfair labor practices occurred after the employer made an unsuccessful attempt to obtain contract concessions from the union. On seeking individual contracts providing less benefits, the employer repeatedly warned: "until you men sign that agreement, there's no more work for you."

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Mine Workers District 30; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Pikeville on 30 April 1986. Adm. Law Judge Frank H. Itkin's decision issued 21 July 1986.

* * *

Lamar Industrial Plastics Co. (7--CA--23969(1), (2); 281 NLRB No. 80) Sterling Heights, Mich. 17 September. Upholding the finding of an administrative law judge, the Board concluded that the employer violated the Act by issuing written warnings to Marlene Craig and Darlene Ward, pursuant to its no-solicitation rule, in order to discourage their activities for the United Auto Workers.

The employer had selectively enforced its no-solicitation rule for alleged solicitation of union cards, the Board in a footnote commented, citing evidence that, both before and after the warning notices, the employer tolerated other forms of nonwork-related activities.

Credited testimony revealed that various items were openly sold during worktime to employees and to management. Testimony also showed that the employer tolerated conversation among employees so long as it was not prolonged and did not interfere with production, the Board noted.

The Board disagreed with the judge's contention that events occurring subsequent to the disciplinary action taken against Craig and Ward were irrelevant to the issue of whether their reprimands were lawful. When an employer rule or policy remains in effect, and the General Counsel's theory is one of selective enforcement, the Board said it is appropriate to consider evidence of disparate treatment both before and after the event in question.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Auto Workers; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Detroit on 19 February 1986. Adm. Law Judge Arline Pacht's decision issued 6 May 1986.

* * *

Shrewsbury Motors, Inc. (22--CA--13424(E); 281 NLRB No. 81) Shrewsbury, N.J. 16 September. The Board ordered that the employer shall be awarded $6879.36 pursuant to its application under the Equal Access to Justice Act, plus any additional legal fees and expenses it can demonstrate have been reasonably incurred in pursuing recovery of attorney fees under the EAJA.

In a 1984 complaint issued by the Acting Regional Director the employer had been charged with illegally refusing to bargain with Amalgamated Local Union 355 as representative of two bargaining units: one of sales employees and the other of service and parts employees. The complaint was later withdrawn; no hearing was held.

The judge concluded that the General Counsel had failed to prove that the General Counsel was substantially justified in alleging that the employer illegally refused to bargain with the union. He found several questions were left unanswered, among which was the following: why did the complaint issue initially when a few months later the Acting Regional Director concluded that further proceedings were not warranted?

(Chairman Dotson and Members Johansen and Stephens participated.)

Adm. Law Judge David S. Davidson's decision issued 14 February 1986.

* * *

Operating Engineers Local 501 (31--CB--6380; 281 NLRB No. 65) Las Vegas, Nev. 10 September. Affirming an administrative law judge, the Board held the union unlawfully expelled from its membership a supervisor covered by the collective bargaining agreement for crossing a picket line to perform his regular supervisory duties, including the adjustment of grievances. It found that the supervisor, as an Assistant Chief Engineer, was expressly covered by the contract, and in addition to being a supervisor within the meaning of the Act, had the authority to adjust employees' grievances.

The judge pointed out that "the Board has consistently held that a supervisor-member's suspension or expulsion from a union constitutes restraint and coercion within the meaning of Section 8(b)(1)(B) of the Act, and has also consistently remedied (such) violations... by ordering the offending unions to rescind the suspensions or expulsions."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Desert Inn Hotel, Country Club and Spa; complaint alleged violation of Act's Section 8(b)(1)(B). Hearing at Las Vegas on 14 January 1986. Adm. Law Judge Jerrold H. Shapiro's decision issued 12 March 1986.

* * *

Mash Transportation, Inc. (25--CA--17484; 281 NLRB No. 71) Whiteland, Ind. 11 September. Affirming an administrative law judge, the Board ruled the employer discriminatorily discharged two truck drivers for their refusal to drive a truck with broken lights they regarded as unsafe. It concluded the protest by the drivers was protected concerted activity under the Act.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Individual; complaint alleged violation of Act's Section 8(a)(1). Adm. Law Judge Phil W. Saunders' decision issued 17 March 1986.

* * *

Ricks Construction Co. (31--CA--9922; 281 NLRB No. 44) Bakersfield, Calif. 9 September. In a second supplemental decision and order, the Board modified an administrative law judge's order to clearly identify the unavailable discriminatees in a backpay specification for whom a Regional Director is directed to establish an escrow account. The judge's order is further modified in accordance with Starlite Cutting, 280 NLRB No. 120, to specify that the backpay awards for the three unavailable discriminatees shall lapse at the end of the one-year escrow period in the event the General Counsel has failed to locate them by that time.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Transportation by La Mar, Inc.; Ready Transportation Co., Inc.; La Mar Googer and Jerome Butler (13--CA--19615, 19634; 281 NLRB No. 79) Chicago, Ill. 17 September. The Board remanded the proceeding for a hearing before an administrative law judge limited to a determination of the net interim earnings of discriminatees, including the availability to the discriminatees of interim employment and the discriminatees' failure to seek and retain such interim employment.

The discriminatees, in a 1981 Board decision, had been ordered reimbursment for losses caused by employer unfair labor practices. The order was later enforced by the U.S. Court of Appeals for the Seventh Circuit. Thereafter a controversy arose over the amount of backpay due.

In this supplemental decision the Board held that the employer denial of knowledge of the discriminatees' efforts to mitigate their losses was sufficient to place in issue the amount of interim earnings of the discriminatees. While the employer denial was not specific, even a general denial of allegations concerning interim earnings is sufficient to raise an issue warranting hearing, the Board held.

As to the alleged amounts of gross backpay, however, the Board found those allegations to be admitted as true. These matters, the Board said, are within

the knowledge of the employer, and its failure to deny gross backpay allegations or to explain adequately the failure to do so requires that such allegations be deemed to be admitted as true in accord with Board rules.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

Brink's Incorporated (1--RC--18349; 281 NLRB No. 74) Dorchester, Mass. 16 September. The Board remanded the proceeding to the Regional Director because of the possibility the employer was denied an opportunity to obtain evidence relevant to the issue of the eligibility of New England Armored Drivers and Helpers Association to become the employees' bargaining representative.

The employer at a representation hearing contended that under Section 9(b)(3) of the Act the Association was not qualified to represent bargaining unit guard employees because it was the alter ego of or was affiliated with Teamsters Local 25, a labor organization that admits to membership employees who are not guards and which had represented the employer's guard employees for about 40 years. The employer had served subpoenas on various individiuals, who then filed petitions to partially revoke subpoenas.

The Board granted the petitions to revoke in their entirety without prejudice to the employer's obtaining new subpoenas. It said that the employer subpoenas generally were drafted without regard for usual standards applicable to subpoenas or discovery. However, because of hearing officer rulings relating to attorney-client privilege and the appropriate time period covered by the subpoena, the Board concluded that the employer may have been denied opportunity to obtain evidence relevant to the Association's eligibility to become bargaining agent, and therefore the Board remanded the proceeding.

On remand, the employer may obtain new subpoenas for documents that may have been excluded improperly by rulings of the hearing officer, the Board said.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Hotel and Restaurant Employees Local 19 (32--CB--1669, 1884; 281 NLRB No. 86) San Jose, Calif. 18 September. The Board agreed with an administrative law judge that the union violated Section 8(b)(1)(A) of the Act by attempting to collect back dues from employees, under threat of discharge, during a contract hiatus period between 1 June 1983 and 1 April 1984 when the parties were without a contract.

The union engaged in similar conduct with respect to Sherman Maddox in September 1984 by attempting to collect from him a $160 reinstatement fee which the union conceded included back dues from the contractual hiatus, the Board further found.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Le Baron Hotel and individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Oakland on 5 and 6 March 1986. Adm. Law Judge David G. Heilbrun's decision issued 25 June 1986.

* * *

H. Treffinger Repair Services, Inc. (4--CA--15394; 281 NLRB No. 85) Camp Hill, Penna. 18 September. The Board sustained an administrative law judge's findings that the company president discriminatorily terminated two supporters of Teamsters Local 776, over the protest of their shop supervisor, during a second union attempt to organize the truck and trailer repair firm.

With respect to a third alleged discriminatee, the employer rebutted the General Counsel's prima facie case by demonstrating that this worker would have been terminated even if he had not engaged in protected activity, the Board found.

The employer, it was further found, also violated the Act by threatening to take reprisals and to close the shop in retaliation for the employees' union support, and by coercively interrogating workers.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Teamsters Local 776; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Harrisburg on 6 February 1986. Adm. Law Judge Marion C. Ladwig's decision issued 30 May 1986.

* * *

Avis Rent-A-Car System, Inc. (4--RC--14839; 281 NLRB No. 87) Philadelphia, Penna. 19 September. Members Johansen and Babson denied as lacking in merit an employer motion for reconsideration of an earlier decision and certification that overruled employer objections to an election held in 1981 among company shuttlers.

Chairman Dotson, concurring in part and dissenting in part, would grant the employer motion for reconsideration, for reasons set forth in his partial dissent in the original certification of Machinists Local 724, as reported at 280 NLRB No. 60 (1986).

Chairman Dotson took no position on the employer's current claim of "inordinate delay" since the 1981 election. He noted, however, that there were periods during the pendency of this case before the Board when the presence of an odd number of sitting Board Members arguably presented an excellent opportunity for issuance of a decision.

Chairman Dotson observed that "...the failure to grasp an early opportunity to issue a decision in this factually uncomplicated case involving no novel legal issues does not speak well of the Board's internal casehandling processes or of the 'expertise' to which we regularly ask the Federal judiciary to defer."

Members Johansen and Babson agreed with the Chairman that the delay in issuing this decision was unfortunate. They did not believe, however, that such delay reflects on the Board's substantive expertise.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

United Graphics, Inc. (19--CA--17365; 281 NLRB No. 70) Seattle, Wash. 15 September. The employer refused to bargain in good faith by not furnishing the union with the names, addresses, wages and fringe benefits of temporary workers referred by an employment agency, the Board ruled.

Under the parties' collective bargaining agreement, the employer may obtain the services of temporary workers whenever it is unable to obtain such employees through the union. The union learned the temporary workers referred to the employer by an employment agency were performing bargaining unit work and that they might not be receiving wages and benefits in accordance with the contract. It asked the employer for information concerning the use of the temporary employees, but the employer refused, contending the temporaries were casual employees employed by another employer.

The Board held that "the type of information concerning unit employees which the union has sought here is presumptively relevant to the union's role as bargaining agent. Furthermore, even assuming that the temporary workers are nonunit employees, it is clear that information regarding individuals who are engaged in performing the same tasks as rank-and-file employees within bargaining unit 'relates directly to the policing of contract terms.'"

The parties had waived a hearing before an administrative law judge.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Cullum Mechanical Construction, Inc. (11--CA--11763; 281 NLRB No. 73) Charleston, S.C. 11 September. Affirming an administrative law judge, the Board dismissed a charge that employee Wokasch was discharged for the protected, concerted activity of complaining about overtime without pay. Instead, the Board found that Wokasch, a pipefitter, had been fired for not wanting to continue working under a pier and insisting on a transfer. However, the employer was found to have violated the Act by interrogating and threatening employees concerning their protected, concerted activities.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Charleston on 18 November 1985. Adm. Law Judge J. Pargen Robertson's decision issued 24 February 1986.

* * *

JCO Food Corp., d/b/a C-Town (2--CA--21013; 281 NLRB No. 72) Bronx, N.Y. 12 September. The Board held the employer unlawfully discharged employee Perez for being a union member. It found that the supermarket's president had told her he didn't want the union and could get someone for half of her salary.

The day after she was fired, Perez went back to the meat department where she had been a wrapper, to pick up her check. In the presence of her replacement and another employee, she commented that she was a Puerto Rican and not a "shit Dominican." The president and the replacement are of Dominican descent.

The administrative law judge said Perez was entitled to backpay but not getting her job back. "I believe that her disparaging remarks against Dominicans renders her 'unfit for future service' with respondent," the judge stated. On this issue, the Board reversed the judge, holding: "While we do not condone Perez' ethnic slur, Perez' conduct is not of such a serious or flagrant nature to warrant withholding the Board's traditional reinstatement remedy."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at New York City on 12 and 13 August 1985. Adm. Law Judge D. Barry Morris' decision issued 17 December 1985.

* * *

Rappazzo Electric Co., Inc. (3--CA--11871; 281 NLRB No. 75) Albany, N.Y. 16 September. Affirming the decision of an administrative law judge, the Board decided that the employer committed several Section 8(a)(5) bargaining violations against Electrical Workers (IBEW) Local 724.

Specifically, the employer illegally repudiated its collective-bargaining agreement with the union, refused to bargain with the union, and unilaterally made changes in wages, pay and other terms and conditions of employment. It failed to obtain employees referred from the union hiring hall as required under the contract, and failed to make fringe benefit contributions to the union's benefit trust fund as required under the contract.

The Board ruled that deferral to arbitration was inappropriate, noting that, contrary to an employer assertion, the issue of whether the collective-bargaining agreement was terminated by the union on 21 April 1983 was not the sole issue in this case. The Board stated that where, as here, there are alleged violations of Section 8(a)(5) that are closely intertwined, deferral of only one of those allegations would not serve the purposes of the Act.

Deferral to arbitration was also held inappropriate because unilateral modification of terms of employment constitutes rejection of the principles of collective bargaining.

(Members Johansen, Babson and Stephens participated.)

* * *

Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center (14--CA--14645; 281 NLRB No. 52), St. Louis, Mo. 15 September. In a supplemental decision and order, the Board upheld a second amended backpay specification ordered by an administrative law judge.

Specifically, the Board ordered Health Enterprises and Geriatric Center, jointly and severally, to pay Mary Young as net backpay $15,572.42; pay the Regional Director $8673.66 to be held in an escrow account for Barbara Pannell for one year in order to give her an opportunity to be brought forward by Food and Commercial Workers Local 545 and be examined by the respondents; and to pay contributions to the union health and welfare fund on behalf of Mary Young. In addition, the Board ordered Geriatric Center to pay 61 employees varying amounts of backpay.

(Members Johansen, Babson and Stephens participated.)

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Reliance Sheet and Strip Co. (Individual), Alameda, Calif. 29 August. 32--CB--2173; JD(SF)--106--86, Richard D. Taplitz, Adm. Law Judge

Pacific Bell (Individual), San Ramon, Calif. 11 September. 32--CA--7900; JD(SF)--113--86, Earldean V.S. Robbins, Adm. Law Judge

B.J. McAdams, Inc. (Individual), Wooster, O. 16 September. 8-CA-18927; JD--250--86, Joel A. Harmatz, Adm. Law Judge

Nisco Nuclear Installation Services (Individual), Augusta, Ga. 17 September. 10-CB-4740; JD(ATL)--66--86, J. Pargen Robertson, Adm.. Law Judge

Stablex of South Carolina, Inc. (Clothing and Textile Workers), Rock Hill, S.C. 17 September. 11-CA-11873; JD(ATL)--64--86, Philip P. McLeod, Adm. Law Judge

Vincent Bach Division of The Selmer Co. (UAW Local 364), Elkhart, Ind. 12 September. 25--CA--17,417; JD--237--86, Robert G. Romano, Adm. Law Judge

Scotts Branch Co. (Individual), Lower Johns Creek, Pike County, Ky. 12 September. 9--CB--6434; JD--236--86, Peter E. Donnelly, Adm. Law Judge

Whitely Products, Inc. (UAW Local 1671), Pierceton, Ind. 15 September. 25--CA--15176; JD--251--86, David S. Davidson, Adm. Law Judge

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. (Teamsters Local 515), Chattanooga, Tenn. 15 September. 10-CA-21713, 10-CA-21811; JD(ATL)--61--86, Lawrence W. Cullen, Adm. Law Judge

Apache Coal Co., Inc. (Mine Workers District 28), Abingdon, Va. 16 September. 5-CA-17239, 5-CA-17410; JD--248--86, Steven M. Charno, Adm. Law Judge

WCCO Radio, Inc., A Division of Midwest Communications, Inc. (Television Artists, AFTRA), 15 September. 18--CA--9549; JD--244--86, Michael O. Miller, Adm. Law Judge

SE-MA-No Electric Cooperative (Electrical Workers, IBEW Local 53), Springfield, Mo. 16 September. 17-CA-12829; JD--246--86, Steven M. Charno, Adm. Law Judge

Gorham Bronze Textron (Molders and Allied Workers), Aiken, S.C. 16 September. 11-CA-11961, 11-CA-12025, Hutton S. Brandon, Adm. Law Judge

Harbor Carting Inc. (Teamster Local 813), Commack, N.Y. 17 September. 29-CA-12168; JD(NY)--83--86, Harold B. Lawrence, Adm. Law Judge

Joyce Western Corporation and Miami Springs Properties, Inc. and James H. Kinkley and Associates, Joint Employees, and Ex Coal Sales, Inc., and Christina Resources, Inc., James H. Kinkley & Sons, Inc. (Individuals), Salyersville, Ky. 18 September. 9--CA--9276-1, et. al.; JD--249--86, John H. West, Adm. Law Judge

Combustion Engineering (Individual), Kansas City, Kan. 16 September. 17-CB-3201; JD--247--86, Steven M. Charno, Adm. Law Judge

M.A. Industries, Inc. (Industrial Union Department, and Graphic Communication International), Peachtree City, Ga. 18 September. 10-CA-20918; JD(NY)--82--86, Eleanor MacDonald, Adm. Law Judge

Waggener-Walker Newspapers, Inc. (Individual), Columbia, Ky. 18 September. 9--CA--22716; JD--245--86, Walter J. Alprin, Adm. Law Judge

The W.G. Diehl Distributing Co. (Teamsters Local 348), Akron, O. 9 September. 8--CA--17626-1; JD--243--86, Walter J. Alprin, Adm. Law Judge

Condor Coal, Inc. (Mine Workers District 28), Abingdon, Va. 18 September. 5-CA-17414; JD--238--86, Hubert E. Lott, Adm. Law Judge

Wolf Trap Foundation For The Performing Arts, et. al. (Individuals), Washington, D.C. 18 September. 5--CA--13813, et al.; JD--240--86, Bernard Ries, Adm. Law Judge

NATIONAL LABOR RELATIONS BOARD

Division of Information
Washington, D.C.

18 September 1986

Publications Available from the National Labor Relations Board

NLRB publications must be purchased from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402. Stock numbers and sales prices per copy are shown below. Orders should NOT be sent to the NLRB.

Single Publications

1. Text of Labor Management Relations Act, 1947, as amended by Public Law 86-257, 1959, and Public Law 93-360, 1974
   (Stock No. 031-000-00146-3. Price $3.50)

2. National Labor Relations Act and Labor Management Relations Act.
   (Stock No. 031-00-00255-9. Price $1.00)

3. 47th Annual Report of the National Labor Relations Board for Fiscal Year 1982
   (Stock No. 031-000-00241-9. Price $7.50)

4. Decisions and Orders of the National Labor Relations Board.

Volume	Stock No.	Price	Period Covered
265	031-000-00245-1	25.00	10/01/82 - 12/28/82
266	031-000-00247-8	23.00	12/29/82 - 08/04/83
267	031-000-00249-4	25.00	08/05/83 - 10/13/83
268	031-000-00250-8	25.00	10/14/83 - 03/05/84
269	031-000-00256-7	32.00	03/06/84 - 04/26/84
270	031-000-00259-1	42.00	11/30/84 - 03/08/85
271	031-000-00260-5	45.00	03/25/85 - 05/29/85
272	031-000-00262-1	34.00	05/29/85 - 07/24/85
273	031-000-00263-0	58.00	07/29/85 - 09/17/85

5. Court Decisions Relating to the National Labor Relations Act

Volume 26, Stock Number 031-000-00225-7, Price $24.00
Volume 27, Stock Number 031-000-00227-3, Price $12.00
Volume 28, Stock Number 031-000-00234-6, Price $18.00
Volume 29, Stock Number 031-000-00240-1, Price $20.00
Volume 30, Stock Number 031-000-00242-7, Price $28.00
Volume 31, Stock Number 031-000-00248-6, Price $38.00
Volume 32, Stock Number 031-000-00252-4, Price $37.00
Volume 33, Stock Number 031-000-00254-1, Price $43.00

6. Classification Outline with Topical Index for Decisions of the National Labor Relations Board and Related Court Decisions

(The outline, September 1982, provides a subject matter classification system for indices to procedural and legal issues of NLRB and related court decisions, using this classification system. In addition, it contains a topical index to the classification outline headings which provides an alphabetized word or term entry to all outline headings containing that word or term. Stock Number 031-000-00232-0. Price $24.00 domestic postpaid.)

7. Classified Index of National Labor Relations Board Decisions and Related Court Decisions (June 1974)

(A basic volume of Board Decisions cumulative from July 1, 1970, to June 30, 1974. Stock Number 831-003-00000-6. Price is $26.00 - domestic; $32.50 - foreign.)

8. Classified Index of National Labor Relations Board Decisions and Related Court Decisions (December 1976)

(Supplements the publications of the same title dated June 1974 and covers Board decisions and related court decisions issued from July 1, 1974, through December 31, 1976. Stock Number 031-000-00178-1. Price is $12.00.)

9. Classified Index of National Labor Relations Board Decisions and Related Court Decisions (December 1979)

(Supplements the publications of the same title dated June 1974 and December 1976, and covers Board decisions and related court decisions issued from January 1, 1977, through December 31, 1979. Stock Number 031-000-00202-8. Price is $23.00.)

10. Classified Index of National Labor Relations Board Decisions and Related Court Decisions (December 1982)

(Supplements the publications of the same title dated June 1974, December 1976, and December 1979 and covers Board decisions and related court decisions issued from January 1, 1980, through December 31, 1982. Stock Number 031-000-00235-4. Price is $18.00.)

11. Classified Index of National Labor Relations Board Decisions and Related Court Decisions (December 1983)

(Supplements the publications of the same title dated June 1974, December 1976, 1979, and 1982 and covers Board decisions and related court decisions issued for the year 1983. Stock Number 031-000-90095-6. Price is $9.50.)

12. Classified Index of National Labor Relations Board Decisions and Related Court Decisions (December 1984)

(Supplements the publications of the same title dated June 1974, December 1976, December 1979 and December 1982 and covers Board and court decisions issued from January 1, 1983 through December 31, 1984.)

13. Classified Index of Decisions of the Regional Directors of the National Labor Relations Board in Representation Proceedings (December 1981)

(Supplements the publication of the same title dated December 1976 and covers Regional Directors final decisions issued from January 1, 1977, through December 31, 1981. Stock Number 831-001-00000-3. Price is $17.00 - domestic; $21.25 - foreign.)

14. Classified Index of Decisions of the Regional Directors of the National Labor Relations Board in Representation Proceedings (December 1984)

(Supplements the publications of the same title dated December 1976 and December 1981 and covers Regional Directors decisions issued in Representation proceedings during part of 1981 and all of 1982 and 1983. Price is $5.50.)

15. Classified Index of Dispositions of ULP Charges by the General Counsel of the National Labor Relations Board (December 1981)

(Covers Advice memoranda, Regional Directors dismissal letters and Appeals memoranda and dispositions issued by the General Counsel from January 1, 1976 through December 31, 1981. Stock Number 831-002-00000-0. Price is $22.00 - domestic; $27.50 - foreign.)

16. **Classified Index of Dispositions of ULP Charges by the General Counsel of the National Labor Relations Board (December 31, 1982)**

(Supplements the publications of the same title dated December 1981 and covers Advice memoranda, Regional Directors dismissal letters and Appeals memoranda and dispositions issued by the General Counsel during calendar year 1982. Stock Number 031-000-90144-8. Price is $5.50.)

17. **NLRB Style Manual**

(Contains simplified rules for uniform Board and court citations, rules for improving legal writing without legalese, and lists of unions by official names and NLRB style. Stock Number 031-000-00237-1. Price is $12.00.)

18. NLRB Manual - Division of Judges

(The purpose of this manual, which consists of annotations regarding procedural and evidential problems, is to assist the administrative law judge in the hearing. Also included are a few guides as to the judge's conduct and an observation on the preparation of a judge's decision. This manual is not a digest; it does not cover substantive law, or all aspects of procedure. Stock Number 031-000-00246-0. Price is $9.00.)

Subscription Service Publications

19. **Weekly Summary of NLRB Cases**

(Contains summary of each published NLRB decision in unfair labor practice and representation election cases; lists decisions of NLRB Administrative Law Judges and directions of elections by NLRB Regional Directors; carries guideline memoranda of NLRB General Counsel to field offices on case-handling subjects; carries notices of publication of volumes of NLRB decisions and orders; NLRB Annual Report and other agency informational literature. The subscription service is $75.00 a year for domestic mailing, $93.75 for foreign addresses. Stock Number 731-002-00000-2.)

20. NLRB Election Report

(This monthly report lists the outcome of secret-ballot voting by employees in NLRB-conducted representation elections in cases closed for each month. The report is compiled from results following resolution of post-election objections and/or challenges. It is arranged in two parts, single union elections and multi-union elections. The election tallies are listed by unions involved, with employer name and location. The subscription service is $27.00 for 12 issues mailed to domestic addresses, $33.75 for foreign subscriptions. Stock Number 731-001-00000-6.)

21. Rules and Regulations and Statements of Procedure of the National Labor Relations Board, Series 8, as amended (1982)

Subscription service includes supplements for an indefinite period. The service is in looseleaf form and is punched for three-ring binder; binder not included. (Stock Number 931-002-00000-7.) Price is $22.00 - domestic; $27.50 - foreign.

22. National Labor Relations Board Casehandling Manual

(In three parts, this manual provides complete, updated General Counsel procedural and operational guidelines to NLRB Regional Offices in processing cases received under the Act. Part One is entitled "Unfair Labor Practice Proceedings," Part Two, "Representation Proceedings," and Part Three, "Compliance Proceedings and Settlement Agreements." The subscription service is $50.00 -domestic; $62.50 -foreign. Stock Number 931-001-00000-1.)

23. Classified Index of NLRB Decisions and Related Court Decisions (CINLR)

(Published on a quarterly basis, The Classified Index covers all Board, ALJs' and NLRB - related court decisions issued during period covering publication. Price is $26.00 for four issues. Stock Number 831-003-00000-6.)

24. Classified Index of Dispositions of Unfair Labor Practice Charges by the General Counsel of the National Labor Relations Board (CIDUL)

(Published on an irregular basis and cumulated, it is compiled by the Office of the General Counsel, and is an index of Advice memoranda, Regional Directors dismissal letters, and Appeals memoranda and dispositions. Price is $22.00 for four issues.)

25. Classified Index of Decisions of the Regional Directors of the National Labor Relations Board in Representation Proceedings (CDLRB)

(Published on an irregular basis and cumulated, it is prepared by the Board's regional offices as an index to decisions issued by the Regional Directors. Price is $17.00 for four issues.)

Publications Available Without Charge

26. Your Government Conducts an Election for You on the Job

Spanish edition of Your Government Conducts

27. A Career in Labor-Management Relations as an Attorney

28. A Career in Labor-Management Relations as a Field Examiner

29. The National Labor Relations Board and You -- Unfair Labor Practices

30. The National Labor Relations Board and You -- Representation Cases

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2036

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

22 - 26 SEPTEMBER 1986 (W-2036)

NEWARK PUBLIC LIBRARY
OCT 20 1986
U. S. GOVT. PUBS.
DEPOSITORY 326

CASES SUMMARIZED

Baddour Inc.	Memphis, Tenn.	3
Holiday Inn East	Springfield, Ill.	3
Interdel Inc.	Bowling Green, N.Y.	2
Plumbers Local 469	Phoenix, Ariz.	1
Sonicraft, Inc.	Chicago, Ill.	3
Ward Trucking Corp.	Gloucester City, N.J.	2
Wayne W. Sell Corp.	Sarver, Penna.	1

OTHER CONTENTS

List of Decisions of Administrative Law Judges 4

List of Directions of Elections by Regional Directors 6

Notice of Publication: Volume 34 of COURT DECISIONS RELATING TO THE NLRA

Request Form for Decisions

LR 1.15/2:

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Plumbers Local 469 (Valley Mechanical, Inc.) (28--CB--2255; 281 NLRB No. 89) Phoenix, Ariz. 22 September. The Board concluded in agreement with an administrative law judge that the union violated the Act by restraining and coercing Valley Mechanical in the selection and retention of its representative for collective bargaining and grievance adjustment when it preferred charges against, tried and fined supervisor Frank Bobnic.

The key issue was whether the union action against Bobnic violated the Act in the circumstance where the union did not have nor seek a collective-bargaining relationship with the employer.

The judge relied on a 1977 Board decision in IBEW Local 73 (Chewelah Contractors, Inc.), 231 NLRB 809, in which the Board adopted without comment a judge's decision that a union violated the Act by fining a supervisor who worked for a company that did not have a contract with that union.

Although the U.S. Court of Appeals for the Ninth Circuit refused to enforce the Board order in Chewelah and adopted a position inconsistent with that of the Board, the judge stated that he was constrained to follow Board rather than Circuit Court law. Controlling Board policy requires administrative law judges to follow Board rather than circuit court law where there is a conflict between the two, until such time as the Supreme Court has ruled, the judge said.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(B). Hearing at Phoenix on 9 August 1984. Adm. Law Judge Richard D. Taplitz's decision issued 11 October 1984.

* * *

Wayne W. Sell Corp. (6--CA--17428, et al.; 281 NLRB No. 82) Sarver, Penna. 22 September. The Board concluded that the employer changed the work assignments of charging party Walter James Stickney and suspended him for three days in retaliation for his filing grievances on behalf of himself and others and for his filing unfair labor practice charges with the Board, thereby violating Sections 8(a)(3) and 8(a)(4) of the Act, respectively.

An administrative law judge had found a Section 8(a)(3) discrimination violation but he concluded that the General Counsel had failed to prove a violation of Section 8(a)(4).

Disagreeing, the Board took note that employer knowledge of the unfair labor practice charges was not in dispute, that the company vice-president in a letter made reference to the charges and questioned Stickney's motive in filing them, and that the company president had unlawfully threatened Stickney with harm at a grievance meeting, directing the employee to "go tell that to the Labor Board too."

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1), (3) and (4). Hearing at Pittsburgh on 30 and 31 October 1985. Adm. Law Judge Burton S. Kolko's decision issued 18 March 1986.

* * *

Interdel, Inc. and Page Welding Corp., subsidiary of Interdel, Inc. (9--CA--22739--1,--2, 9--CA--22833--1,--2; 281 NLRB No. 88) Bowling Green, Ky. 23 September. Absent good cause being shown for the employer failure to file an answer to the complaint, the Board granted summary judgment and found that the employer violated the Act by refusing to abide by its collective-bargaining agreement with the United Auto Workers; by refusing to furnish the union requested bargaining information; and by refusing to negotiate over the effects on employees of the closing of its Bowling Green facility.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by UAW; complaint alleged violation of Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 9 June 1986.

* * *

Ward Trucking Corp. (4--RC--15622; 281 NLRB No. 83) Gloucester City, N.J. 23 September. The Board overruled Teamsters Local 107's election objections alleging that the employer had paid for or subsidized the living expenses of employees Everette Bowers, Gary Lucas, and Michael and John Sinisi after they transferred to the Gloucester City, New Jersey, terminal as an inducement to vote against the union in an election held 26 October 1984.

With respect to one objection, a hearing officer found that the employer had improperly allowed Lucas and the Sinisi brothers to live in a "company house." In disagreement with the hearing officer, the Board found that the employer had established that its decision to obtain the "company house" was made for legitimate business reasons. It also noted that past employer practice had been to provide free housing to employees for prolonged periods of time. The Board further noted that the three employees had to pay $50 per month rent to stay in the company house, which was unfurnished, dirty and in need of repair, as well as to perform housekeeping and maintenance chores. Under the circumstances the Board was unable to conclude that the employer decision was reasonably calculated to influence the election result.

Similarly, the Board was unable to conclude that the employer decision to approve meals, lodging and mileage allowances to Bowers, a long-time employee, was the type of benefit reasonably calculated to influence the votes of employees. Among other reasons the Board cited credited testimony that the employer had on occasion paid employees "expenses" that the employees did not actually incur.

(Members Johansen, Babson and Stephens participated.)

* * *

Sonicraft, Inc. (13--CA--22448(E); 281 NLRB No. 90) Chicago, Ill. 26 September. Affirming an administrative law judge's second supplemental decision, the Board denied the employer's claim of attorneys' fees under the Equal Access to Justice Act. The issue before the Board was whether the issuance of the certification, without a hearing on the merits of the employer's objections, was substantially justified. The employer had objected that the union, with the acquiescence of the NLRB agent conducting the election, utilized more than the agreed upon number of election observers without the knowledge or consent of the employer. In its earlier decision, 276 NLRB No. 44 (1985), the Board sustained that objection and set aside the election.

In this decision, the Board upheld the judge's finding that "existing precedent and the evidence before the Regional Director and Board supported their decision to overrule (the employer's objection)... Moreover, the evidence before the Regional Director at that time raised no substantial and material issues of fact requiring a hearing." Accordingly, it found that the employer was not entitled to an award.

(Chairman Dotson and Members Johansen and Babson participated.)

Adm. Law Judge Claude R. Wolfe's Second Supplemental Decision issued 26 February 1986.

* * *

Raynor Motel Corp. d/b/a Holiday Inn East (33--CA--7434; 281 NLRB No. 92) Springfield, Ill. 26 September. Affirming an administrative law judge, the Board ruled the employer unlawfully discharged waitress Marilyn Finfrock for engaging in union activities. The motel's purported reason for firing her-- that she had made disparaging comments about the business and its management to customers-- was a pretext for getting rid of her and undermining the union's organization campaign, it concluded.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 16; complaint alleged violation of Act's Section 8(a)(3) and (1). Hearing at Springfield on 10 and 11 February 1986. Adm. Law Judge Claude R. Wolfe's decision issued 7 April 1986.

* * *

Baddour, Inc. (26--CA--9846, et al.; 281 NLRB No. 84), Memphis, Tenn. 26 September. The Board directed that a new election be held after finding the employer had engaged in numerous unfair labor practices that prejudiced the outcome of a 1982 election. Affirming an administrative law judge, it ruled the employer's no-solicitation/no-distribution rule violated the Act by prohibiting distribution of any kind; it further found the employer had unlawfully interrogated, coerced, surveilled, discharged, and demoted employees as a result of their union activities.

The Board rejected the employer's contention that the judge's rulings were the result of bias, or that he had abused his authority by limiting the participation of one of the employer's attorneys at the hearing for being excessively argumentative. On the tenth day of the trial, the judge and counsel engaged in an extended colloquy during which the judge repeatedly asked the attorney to cease arguing the point in issue and to remain quiet. After the attorney persisted, the judge limited the attorney's participation to assisting at the counsel table. The Board concluded, "Respondent's interests were adequately protected by the judge's willingness to grant the respondent continuing objections to lines of inquiry considered improper by the respondent."

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 667; complaint alleged violation of Act's Section 8(a)(1), (3) and (4). Hearing at Memphis on 22-25 February, 28-31 March, and 19-21 April 1983. Adm. Law Judge George Norman's decision issued 11 October 1983.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Sun World, Inc. (Food and Commercial Workers Local P-78-B), Thermal, Calif. 9 September. 21--CA--19904, et al.; JD(SF)--112--86, Michael D. Stevenson, Adm. Law Judge

Harbor Carting Inc. (Teamsters Local 813), Commack, N.Y. 17 September. 29-CA-12168; JD(NY)--83--86, Harold B. Lawrence, Adm. Law Judge

Downey Glass Co., Inc. (Individual), Los Angeles, Calif. 10 September. 21--CB--9421; JD(SF)--108--86, Gordon J. Myatt, Adm. Law Judge

P & M Cedar Products, Inc. (Woodworkers Local 3-433), Anderson, Calif. 11 September. 20--CA--20132; JD(SF)--114--86, James M. Kennedy, Adm. Law Judge

Hawaiian Dredging & Construction Co. (Individual), Honolulu, Hawaii. 3 September. 37--CB--616, 37--CB--623; JD(SF)--102--86, Harold A. Kennedy, Adm. Law Judge

U.S. Postal Service (Individual), Hicksville, N.Y. 23 September. 29-CA-11989(P),Robert T. Snyder, Adm. Law Judge

Queen City Pontiac - GMC, Inc. (Amalgamated Local 355 and Automobile, Aerospace & Agricultural Implement Workers Local 259), Nerwark, N.J. 23 September. 22-CA-14278, 22-CA-14394; JD(NY)--84--86, James F. Morton, Adm. Law Judge

Mercury Marine - Division of Brunswick Corp. (UAW), Stillwater, Okla. 23 September. 16-CA-12543; JD(ATL)--58--86, Richard J. Linton, Adm. Law Judge

Southland Frozen Foods, Inc. (Food and Commercial Workers Local One), Barker, N.Y. 23 September. 3--CA--13071-2; JD(NY)--78--86, Howard Edelman, Adm. Law Judge

The Barking Fish Cafe (Individual), New York, N.Y. 23 September. 2-CA-21315; JD(NY)--86--86, Joel P. Biblowitz, Adm. Law Judge

B & W Machine & Welding Co. (Machinists District 190, Local 2182), W. Sacramento, Calif. 9 September. 20--CA--19974, 20--CA--2065; JD(SF)--107--86, Joan Wieder, Adm. Law Judge

U.S. Postal Service (Individual), Warrendale, Penna. 23 September. 6--CB--6862(P); JD--254--86, Robert T. Wallace, Adm. Law Judge

Country Boy Markets (Attorney), Midwest City, Okla. 24 September. 16--CA--12544; JD--255--86, Thomas D. Johnston, Adm. Law Judge

Marine Engineers, District 1 (Crest Tankers, Inc.), St. Louis, Mo. 24 September. 14--CB--6124; JD--256--86, Frank H. Itkin, Adm. Law Judge

Hendrick Mfg. Co. (Machinists Local 1653), Carbondale, Penna. 25 September. 4--CA--15284; JD--253--86, Thomas R. Wilks, Adm. Law Judge

Superior Warehouse Grocers, Inc. (Individual and Food and Commercial Workers Local 1428), Covina, Calif. 9 September. 21--CA--22061, et al.; JD(SF)--109--86, Burton Litvack, Adm. Law Judge

Gladstone's 4 Fish (Individuals), Pacific Palisades, Calif. 9 September. 31--CA--15224, et al.; JD(SF)--105--86, Joan Wieder, Adm. Law Judge

Ralphs Grocery Co. (Teamsters Local 630), Compton, Calif. 9 September. 31--CA--15535; JD(SF)--111--86, Earldean V.S. Robins, Adm. Law Judge

Marriot Corp. (Individual), Queens, N.Y. 25 September. 29--CA--11748; JD(NY)--76--86, Winifred D. Morio, Adm. Law Judge

Mario Milevoi and Lucia Milevoi, Joint Owners (Service Employees Local 32E), Bronx, N.Y. 25 September. 2-CA-21624; JD(NY)--88--86, Harold B. Lawrence, Adm. Law Judge

Gilbert Spruance Co. (Individual), Philadelphia, Penna. 26 September. 4--CB--5144; JD--261--86, Donald R. Holley, Adm. Law Judge

Schurpack, Inc. (Individual), St. Joseph, Mo. 23 September. 17--CA--12854; JD--252--86, Irwin H. Socoloff, Adm. Law Judge

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

United Health Services, Inc. (3-RC-8924), Albany, N.Y. 23 September. All technical employees shall vote for representation by Broom United Nurses Assoc./FNHP/NYSUT/AFL-CIO, or for no representation.

Kansas Gas Supply Corp. (17-RC-9853), Wichita, Kansas. 18 September. All production and maintenance employees shall vote for representation by Oil Workers, or for no representation.

Vehicle Test Technology, Inc. (19-RC-11455), Seattle, Washington. 12 September. All regularly employed inspectors shall vote for representation by Food and Commercial Workers Local 1105, or for no representation.

Tricil (NY) Inc. (3-RC-8944), Buffalo, N.Y. 26 September. All full-time and regular part-time waste collection and maintenance employees shall vote for representation by Teamsters Local 317, or for no representation.

Holmes Protection Of N.J., Inc. (22-RC-9647), Newark, N.J. 25 September. All installers shall vote for representation by Communications Workers, or for no representation.

* * *

NATIONAL LABOR RELATIONS BOARD
DIVISION OF INFORMATION
WASHINGTON, DC

23 September 1986

NOTICE OF PUBLICATION

Volume 34 of COURT DECISIONS RELATING TO THE NATIONAL LABOR RELATIONS ACT has been published by the Superintendent of Documents, U.S. Government Printing.

Volume 34, 1140 pages, covers the period 1 January 1982 through 31 December 1982.

The Price: $45.00

Orders for Volume 34, Stock No. 031-000-00258-3, should be sent to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Orders must be accompanied by cash, check or money order--unless the purchaser has a Deposit Account Number. Do NOT send orders or payments to the NLRB.

An order form follows:

ORDER FORM To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐-☐

Order No._____

VISA

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Send ____ copies of Volume 34, Court Decisions Relating to the National Labor Relations Act.
Stock No. 031-000-00258-3. Price: $45.00

Company or personal name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity	Charges
	Enclosed
	To be mailed
	Subscriptions
	Postage
	Foreign handling
	MMOB
	OPNR
	UPNS
	Discount
	Refund

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2037

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

29 SEPTEMBER - 3 OCTOBER (W-2037)

CASES SUMMARIZED

Ace Electric Construction Corp., et al.	New York, N.Y.	5
Air Express International USA, Inc.	Denver, Colo.	13
American Bank Note Co.	New York, N.Y.	3
American National Insurance Co.	Galveston, Tex.	1
Auto Workers Local 785	Dayton, O.	8
California Dental Care, Inc.	Roseville, Calif.	1
Cane Creek Energy, Inc.	Lebanon, Va.	11
Carpenters Local 1931	New Orleans, La.	8
Display Workers Local 349	Atlanta, Ga.	11
Donna Lee Sportswear Co., Inc.	Boston, Mass.	6
E.B. Manning & Son, Inc.	Pico Rivera, Calif.	19
E/M Corp.	Dayton, O.	2
Electrical Workers IBEW Local 617	San Mateo, Calif.	20
Electrical Workers IBEW Local 2148	Page, Ariz.	18
Groves Truck and Trailer	Fairbanks, Alaska	19
Hercules, Inc.	Parlin, N.J.	14
Hydro-Aire Division, Crane Co.	Burbank, Calif.	5
International Distribution Center	Germantown, N.Y.	7

NEWARK PUBLIC LIBRARY
OCT 23 1980
U. S. GOVT. PUBS.
DEPOSITORY 376

LR 1.15/2:

MacDonald's Industrial Products, Inc.	Grand Rapids, Mich.	10
Maple Tree, Inc.	Maplesville, Ala.	2
Modern Iron Works, Inc.	Trenton, N.J.	15
National Fire Protection, Inc. and Mutual Sprinkler Contractors and Engineers, Inc.	Philadelphia, Penna.	6
National Livery Services, Inc.	New York, N.Y.	11
New London Convalescent Home	Waterford, Conn.	15
Newspaper and Mail Deliveries Union of New York	Woodbridge, N.J.	10
Northwest Metal Products, Inc.	Kent, Wash.	17
Painters Local 277	Atlantic City, N.J.	9
Playboy Hotel & Casino	Atlantic City, N.J.	19
Service Electric Co.	Stockton, Calif.	4
Sky Cap, Inc.	Detroit, Mich.	9
Springfield Transit Mgt., Inc.	Springfield, Mass.	7
St. John's General Hospital	Pittsburgh, Penna.	16
Super-H Discount	Owasso, Okla.	17
Teamsters Local 42	Lynnfield and Lawrence, Mass.	9
Teamsters Local 814	New York, N.Y.	17
Timber Products Co.	Medford, Oregon	12
Trustees of Boston University	Boston, Mass.	12
U.S. Postal Service	Philadelphia, Penna.	14

OTHER CONTENTS

List of Decisions of Administrative Law Judges 20

List of Directions of Elections by Regional Directors 22

General Counsel Memorandum: Affidavit Experiment - New Confidentiality Statement

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

American National Insurance Co. (23--CA--9510, 23--CA--9602; 281 NLRB No. 105) Galveston, Tex. 30 September. The Board affirmed an administrative law judge's decision that the employer illegally refused to recognize and bargain with the Food and Commercial Workers after it had merged with the Insurance Workers International Union.

The Board ruled that the Insurance Workers' exclusion of nonmember unit employees from the merger vote does not preclude the finding of a violation based on the refusal to bargain with the newly merged entity. It cited the recent Supreme Court decision in NLRB v. Financial Institution Employees, 106 S. Ct. 1007 (1986) that the Act does not require that nonmembers be permitted to vote in union affiliation elections.

The Board also said that there is a continuity of identity between the Insurance Workers and the postmerger bargaining representative; and that the Insurance Workers had provided union members a fair and meaningful opportunity to become fully informed about the proposed merger and to cast an informed vote.

In another violation, an employer poll of employees was held illegal because the poll was not conducted by secret ballot as required by Struksnes Construction Co., 165 NLRB 1062 (1967).

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Food and Commercial Workers; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Galveston on 11 and 12 April 1984. Adm. Law Judge William A. Gershuny's decision issued 8 August 1984.

* * *

California Dental Care, Inc. (20--CA--17381; 281 NLRB No. 93) Roseville, Calif. 29 September. Affirming an administrative law judge's supplemental decision, the Board ordered the employer to pay to Doctors Ted Brush, Jr. and Juan Delgado the respective backpay amounts of $18,960.96 and $97,725.61.

The two dentists had been victims of illegal employer discrimination as found by the Board in a 1984 decision reported at 272 NLRB 453.

In this backpay proceeding, a significant dispute arose between the General Counsel and the employer over the formula for determining the amount of backpay the two doctors would have earned had they not been discharged.

The employer argued that the proper formula for gross backpay should be based on earnings of replacement employees who worked in jobs similar to the discriminatees' jobs, but the judge decided that the General Counsel's formula-- an average based on a full 11-month period prior to the discharges-- was more fair and more equitable.

The judge noted that Doctors Delgado and Brush, the highest and second highest earners among the employer dentists, were paid on a piece rate or commission basis. Their consistently higher earnings, the judge said, could only be attributable to their skills. If the dentists were equal as the employer contended, their earnings would be equal over the long run, the judge reasoned in rejecting the employer replacement backpay formula.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Physicians and Related Professional Unions; complaint alleged violation of Act's Section 8(a)(1) and (3). Adm. Law Judge Jay R. Pollack's supplemental decision issued 24 March 1986.

* * *

E/M Corporation (9--CA--22891; 281 NLRB No. 104) Dayton, O. 29 September. Upholding the findings of an administrative law judge, the Board concluded that the employer discriminatorily discharged Edgar Kirkendall on 12 February 1986 because of his activities for the Steelworkers, illegally interrogated an employee concerning what he thought about the union, and impliedly threatened an employee with discharge if the union succeeded in organizing the plant.

The union, which in January 1986 began its organizing drive among employees of this corporation whose business is treating metal products, was certified as bargaining agent in a 25-employee unit in May 1986 after winning a representation election.

Even though Kirkendal was a probationary employee at the time of his discharge, this did not detract from finding his discharge unlawful, the judge remarked. He cited the employer knowledge of Kirkendall's union activity, an admission by the production superintendent made to Kirkendall that the union was a reason for the discharge, rejection of the only other specific reason given to Kirkendall for his discharge which was contrary to and refuted by the evidence, and union animus as established by the other violations.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Steelworkers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Dayton on 20 May 1986. Adm. Law Judge Thomas D. Johnston's decision issued 30 June 1986.

* * *

Maple Tree, Inc. (10--CA--20759; 281 NLRB No. 97) Maplesville, Ala. 29 September. The Board ordered the employer to make whole Shirley Rigsby by payment of $5395, Glinda Short by payment of $7720 and Jean Davis by payment of $8299.

In a 1985 decision the Board had found the three were unlawfully terminated because of their activity for the Ladies Garment Workers.

In the instant backpay matter, the parties stipulated the amount of backpay due Rigsby. However, as to Short and Davis, the employer argued that these employees would have been laid off without regard to the unfair labor practices and would not have been recalled. It predicated this argument on the alleged strict company policy requiring layoff solely on the basis of seniority within individual job classifications.

The strict seniority policy was not supported by the record, including the testimony of the employer's own plant manager, who admitted that efficient employees were moved from one job duty to another in order to avoid layoff, the judge found. He concluded that Short and Davis would not have been laid off were it not for their unlawful discharge, reasoning that even if there was reduction in available work for Short and Davis in their regular classification, the employer would have transferred them to another job in order to avoid laying them off because the employer considered them among its best employees.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Garment Workers; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Clanton on 19 February 1986. Adm. Law Judge Phillip P. McLeod's supplemental decision issued 30 June 1986.

* * *

American Bank Note Co. (2--CA--21486; 281 NLRB No. 99) New York, N.Y. 29 September. Sustaining the decision of an administrative law judge, the Board found that the employer violated the Act by refusing to honor and abide by the 1986-89 labor agreement negotiated between Graphic Communications Local 51 and the Printers League Section, Printing Industries of Metropolitan New York, Inc.

The judge first determined that the employer was a member of the League at all pertinent times and that it had granted authority to the League to act for it in multiemployer bargaining with Local 51 which began on 20 December 1985.

The judge then held that the employer attempt to withdraw from multiemployer bargaining was not done in accordance with the standards enunciated in Retail Associates, 120 NLRB 388 (1958).

In Retail Associates the Board stated that an employer could withdraw from multiemployer bargaining upon written notice made prior to the date set by the contract for modification of the existing contract or prior to the agreed upon date to begin negotiations.

Here the employer did not advise the League or Local 51 in writing of its intention to withdraw either before 3 December, the date set for contract modification, or 20 December, the agreed upon date for start of negotiations.

The judge also ruled that there were no unusual circumstances to justify the untimely withdrawal, made 30 January 1986, two days after agreement on a new contract was reached.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Graphic Communications Int'l Local 51; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at New York on 21 March 1986. Adm. Law Judge Winifred D. Morio's decision issued 16 July 1986.

* * *

Service Electric Co. (32--CA--5998; 281 NLRB No. 107) Stockton, Calif. 29 September. The Board held the employer did not violate the Act by refusing to acquiesce to the union's demand that employment terms existing prior to a strike be substituted for those then prevailing for employees hired to replace strikers during the strike.

The General Counsel conceded the employer was not obliged to bargain regarding replacements' employment terms during the course of an admittedly economic strike that began on 14 June 1982. However, the General Counsel argued that the union terminated the strike on 12 August, and the employer had violated the Act by not agreeing to pre-existing employment terms when hiring replacements.

The administrative law judge, whose decision was affirmed, found no evidence that the union had ended the strike on 12 August, noting that the striking employees neither offered to return to work nor abandoned future employment with the employer. He concluded that "imposition of an obligation to substitute pre-existing employment terms, for ones under which replacements had been working prior to 12 August, would tend to nullify respondent's right to continue employing replacements, would oblige the union to simultaneously bargain in the best interests of groups of employees with diametrically opposed interests, and would not advance the interests of the collective-bargaining process."

In adopting the judge's findings, Chairman Dotson noted that in his view "under no circumstances would the Act require an employer to apply preexisting terms of employment to its economic strike replacements upon the strike's termination." Member Stephens stated that even assuming the strike had ended, the employer at that time was under no duty to apply the preexisting contract terms to its strike replacements.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Electrical Workers (IBEW) Local 591; complaint alleged violtion of Act's Section 8(a)(5) and (1). Hearing at Stockton on 17 May 1984. Adm. Law Judge William J. Pannier III's decision issued 24 July 1984.

* * *

Ace Electric Construction Corp., et al. (2--CA--17448, et al.; 281 NLRB No. 94) New York, N.Y. 29 September. The Board modified the backpay remedy recommended by an administrative law judge, pursuant to its recent decision in Starlite Cutting, 280 NLRB No. 120 (1986).

Accordingly, the Board held that the backpay awards to four unavailable discriminatees shall lapse at the end of the 1-year escrow period that the order establishes in the event the General Counsel has failed to locate the discriminatees by that time.

Member Stephens noted that, were his concurring and dissenting opinion in Starlite the prevailing view, the awards would not lapse at the end of the escrow period, and that the Regional Director would be permitted to apply for a 1-year extension of the escrow period and would impose on the respondents the burden to establish justification for extinction of the backpay liability or reduction in the amount owed.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at New York on 2 and 3 July 1984. Adm. Law Judge Howard Edelman's supplemental decision issued 31 January 1985.

* * *

Hydro-Aire Division, Crane Co. (31--RC--5945; 281 NLRB No. 133) Burbank, Calif. 30 September. The Board concluded that the employer did not engage in election interference when its security chief temporarily impounded a stack of prounion leaflets and a list of eligible voters annotated to reflect supposed preferences in an upcoming representation election that an employee organizer was carrying as he attempted to leave the plant.

The security chief, who was acting pursuant to a valid company rule and who was oblivious to the presence of the annotated voter eligibility list, did not permit the organizer to carry the materials out of the plant until he first obtained a property pass from an authorized official.

The Board held that the employer action did not reasonably tend to create an impression of surveillance interfering with the election, overruled the election objection filed by Teamsters Local 986, and certified that a majority of valid ballots had not been cast for union representation.

Member Babson agreed with his colleagues that the union did not adduce sufficient evidence to show that the employer perused the list. He also did not believe that the union demonstrated that the compromise, if any, of the allegedly confidential list was due to anything other than the union's own lack of care in maintaining the list.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

National Fire Protection, Inc. and Mutual Sprinkler Contractors and Engineers, Inc. (4--CA--13814(E); 281 NLRB No. 100) Philadelphia, Penna. 29 September. The Board denied an employer application for an award under the Equal Access to Justice Act, finding that the General Counsel had been substantially justified in litigating this case.

Because of the above finding, the Board found it unnecessary to reach the issue of whether the applicant's filing was timely.

The Board found no merit in the employer contention that because an administrative law judge in his original decision made credibility resolutions contrary to those proposed by the General Counsel, those rulings diminish her justification.

Credibility was a factor in union knowledge concerning the relationship between National and Mutual, the Board noted. In addition, where, as here, a credibility conflict cannot be resolved administratively through documentary evidence, Board practice and procedure require that such credibility issues be resolved at a hearing before an administrative law judge, the Board remarked.

(Members Johansen, Babson and Stephens participated.)

Adm. Law Judge James L. Rose's supplemental decision issued 23 January 1986.

* * *

Donna Lee Sportswear Co., Inc., et al. (1--CA--22684; 281 NLRB No. 106) Boston, Mass. 30 September. Affirming an adminstrative law judge's unfair labor practice findings, the Board ordered the employer to cease repudiating any collective-bargaining agreement it may have with Garment Workers Local 229, unilaterally withdrawing recognition from that union, unilaterally ceasing contributions to funds established by contract for bargaining unit employees, prohibiting Local 229 representatives from entering its premises during the term of the contract, and in any like or related manner restraining or coercing employees in the exercise of their rights under the Act.

Additionally, the employer was ordered to make whole employees who lost benefits as a reslt of unilateral and unlawful action, restore all terms and conditions of employment provided by the contract, and upon request to meet at reasonable times and places with Local 229 to discuss terms of employment and to incorporate any agreement reached into a written contract.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Garment Workers; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Boston on 19 and 20 June and 16 July 1985. Adm. Law Judge George F. McInerny's decision issued 11 March 1986.

* * *

International Distribution Centers, Inc. (3--CA--12207; 281 NLRB No. 111) Germantown, N.Y. 30 September. Members Johansen and Stephens ruled that the employer violated the Act by refusing to transmit to Teamsters Local 294 health and welfare contributions on behalf of employees and transmit dues deducted pursuant to checkoff as required under its agreement with the union.

The employer's only defense for its action was a claim of economic necessity, an argument which the panel majority held that does not constitute an adequate defense, even if proven.

Dissenting Chairman Dotson, citing his dissent in Rapid Fur Dressing, 278 NLRB No. 126, noted the lack of evidence that the employer repudiated the labor agreement. "By finding a violation in these circumstances, the Board is once again allowing itself to be used as a collection agency for the Charging Party," the Chairman said.

The panel majority noted that here, unlike Rapid Fur, checked-off dues, as well as trust fund contributions, are involved, and that the checked-off dues violation "plainly implicates interests of the Act beyond mere breach of contract."

Member Johansen noted that in certain circumstances he would not find employer delinquency with regard to contract obligations unlawful. However, to avoid finding a violation, the employer must present evidence that, despite its delinquency, it has not in fact repudiated the contract.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Teamsters Local 294; complaint alleged violation 8(a)(1) and (5). Case transferred directly to the Board.

* * *

Springfield Transit Management, Inc. (1--CA--22718; 281 NLRB No. 124) Springfield, Mass. 30 September. Members Johansen and Babson upheld the finding of an administrative law judge that the employer violated the Act by refusing to execute an agreement previously reached with Local 448, Amalgamated Transit Union.

Dissenting Chairman Dotson would remand the proceeding for further consideration of whether the Board has jurisdiction over the respondent.

The panel majority noted that the Board's recent decisions in Res-Care, Inc., 280 NLRB No. 78 (1986) and Long Stretch Youth Home, 280 NLRB No. 79 (1986), clarified the principles under which the Board may, in exercising its discretion, decline to assert jurisdiction over an employer because of its relationship to an entity exempt from Board jurisdiction. Here however, the employer has not contested the Board's jurisdiction and the Board need not pass on the discretionary jurisdictional issue, the majority stated.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Amalgamated Transit Local 448; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Springfield on 26 June 1985. Adm. Law Judge George F. McInerny's decision issued 25 September 1985.

* * *

Carpenters Local 1931 (15--CB--3107; 281 NLRB No. 142) New Orleans, La. 30 September. The Board affirmed an administrative law judge's unfair labor practice finding that the union illegally removed John W. McCaffrey's name from its out-of-work list on 16 September 1985 for arbitrary, discriminatory and irrelevant considerations; but it modified the judge's recommended order.

The General Counsel excepted to the judge's failure to order reimbursement to McCaffrey for losses caused by discrimination. The judge had concluded that there was no evidence or allegation that McCaffrey's removal from the out-of-work list for two weeks caused him to miss any employment opportunities or to lose any wages.

The Board did not consider those observations to justify omission of a make-whole remedy, concluding that McCaffrey's monetary loss, if any, resulting from this unlawful removal from the list, is properly established at compliance. The Board therefore modified the order to require that the union make McCaffrey whole for any such loss.

The Board also modified the order to provide for restoration of McCaffrey's name to the union out-of-work list in the same position which it occupied before it was discriminatorily removed.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at New Orleans on 21 January 1986. Adm. Law Judge Claude R. Wolfe's decision 12 March 1986.

* * *

Auto Workers Local 785 (9--CB--6261; 281 NLRB No. 102) Dayton, O. 30 September. Sustaining the findings of an administrative law judge, the Board concluded that the union violated the Act by threatening employees with discharge for refusing to tender periodic dues for a time they were not contractually obligated to do so, by causing the deduction of back dues and reinstatement fees from employees by using signed authorizations that were not voluntarily obtained, and by using the current security provision for pre-contract arrears.

Still further violations included threatening Dayton Forging & Heat Treating Co. with invocation of an invalid security provision, causing the employer to deduct dues and reinstatement fees from employees whose authorizations were not voluntarily obtained, and using the current security provision for pre-contract arrears.

(Chairman Dotson and Members Johansen and Babson particpated.)

Charges filed by The Dayton Forging & Heat Treating Co.; complaint alleged violation of Act's Section 8(b)(1) and 8(b)(2). Hearing at Dayton on 16 October 1985. Adm. Law Judge Burton S. Kolko's decision issued 21 May 1986.

* * *

Sky Cap, Inc. (7--RC--17940; 281 NLRB No. 116) Detroit, Mich. 30 September. Having been advised by the National Mediation Board that the activities and employees of Sky Cap are subject to the Railway Labor Act, the Board dismissed the representation petition of the Railway, Airline and Steamship Clerks.

(Members Johansen, Babson and Stephens participated.)

* * *

Painters Local 277 (Polis Wallcovering Co., etc.) (4--CB--4170(E); 281 NLRB No. 119) Atlantic City, N.J. 30 September. The Board denied the union application for an award of attorney fees and expenses under the Equal Access to Justice Act.

In adopting an administrative law judge's dismissal of the application, the Board found it unnecessary to rely on his general observation that "it is difficult to imagine that the General Counsel could ever be faulted under EAJA" when the evidentiary burden in the underlying proceeding has shifted to the respondent.

As the Board noted in Jim's Big M, 299 NLRB 665 (1983) the presence or absence of a prima facie case is not determinative of whether an applicant is entitled to an EAJA award.

(Members Johansen, Babson and Stephens participated.)

Adm. Law Judge Joel A. Harmatz's supplemental decision issued 25 April 1986.

* * *

Teamsters Local 42 (J.W. Daly, Inc.) (1--CB--6176; 281 NLRB No. 132) Lynnfield and Lawrence, Mass. 30 September. In agreement with an administrative law judge's decision, the Board found unlawful the union refusal to negotiate a seniority list which would dovetail the seniority of two represented units after they merged into one unit at J.W. Daly's new Peabody, Mass. location, solely because the employees from the firm's Lynnfield facility had been union members for a longer period of time than those from the Lawrence plant.

The judge remarked that "Local 42 clearly was on the horns of a dilemma: no matter what seniority system it proposed, one group of Daly employees would be adversely affected and discontented. While acknowledging Respondent's predicament, I nevertheless conclude that the Union could not

lawfully resolve its problem by conduct which placated the Lynnfield employees because of their greater numbers and lengthier union membership in preference to the Lawrence employees."

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Boston on 16 January 1986. Adm. Law Judge Arline Pacht's decision issued 23 April 1986.

* * *

MacDonald's Industrial Products, Inc. (7--CA--24960; 281 NLRB No. 91) Grand Rapids, Mich. 29 September. The Board held that computation of the 6-month limitation period set forth in Section 10(b) of the Act properly begins the day following commission of the alleged unfair labor practice.

The employer in a motion for summary judgment had asserted that the 6-month limitation period includes the day of the alleged offense. Since the alleged offense-- termination of charging party Debbie Gritter-- occurred 4 March 1985, and the charge was filed 4 September 1985, the charge was untimely filed and the complaint should be dismissed, the employer contended.

The Board disagreed with the position of the employer, denied its motion for summary judgment, concluded the charge was timely filed, and remanded the proceeding to the Regional Director.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1) and (3).

* * *

Newspaper and Mail Deliveries Union of New York (22--CD--461; 281 NLRB No. 95) Woodbridge, N.J. 29 September. Unrepresented employees of TC Enterprises, L.T.D. d/b/a Associated Securities Specialists are entitled to perform the disputed work consisting of the delivery operations of the News Tribune newspaper at the company facility in Woodbridge, N.J., the Board determined.

The Board further held that the respondent union is not entitled by means proscribed by the Act to force Macromedia Publishing Incorporated to assign the disputed work to employees represented by it.

The factors of company preference and practice and economy and efficiency of operation were used by the Board in determining the work dispute.

Testimony revealed that delivery of the News Tribune under its contract with Associated is more economical and efficient because Associated's unrepresented employees make bulk deliveries to branch counselors as opposed to delivering papers to individual carriers.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

Cane Creek Energy, Inc. (5--CA--17721; 281 NLRB No. 101) Lebanon, Va. 29 September. The Board concluded that the employer answer to the complaint constituted an admission that the complaint allegations were true.

The employer answer neither specifically denied nor stated that it was without knowledge of the complaint allegations.

The employer violated the Act by refusing to implement terms contained in its collective-bargaining agreement with the United Mine Workers, bypassed the union and dealt directly with workers, and closed its coal mine without affording the union an opportunity to bargain about the effects of the action.

The employer was also found guilty of illegal interrogation and threats.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Mine Workers; complaint alleged violation of Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 10 June 1986.

* * *

Display Workers' Union Local 349, a/w Southern Joint Board of ILGPNWU (10--CD--307; 281 NLRB No. 103) Atlanta, Ga. 30 September. Employees of Freeman Decorating Co. represented by Local 349 are entitled to install, maintain, and dismantle company-owned rental displays and hanging signs attached to exhibits, the Board determined.

Theatrical Stage Employees Local 41 had contended that the above work should be awarded employees whom it represents because of its contract with the employer and because IATSE-represented employees have performed the work in the past.

In awarding the disputed work to employees represented by respondent union Local 349, the Board relied on company preference and past practice, relative skills, economy and efficiency of operation and job impact.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

National Livery Services, Inc. (2--CA--20519, 2--CA--20538; 281 NRLB No. 98) New York, N.Y. 30 September. Upholding the decision of an administrative law judge, the Board dismissed the complaint alleging that the employer discriminatorily discharged two limousine drivers because they supported the New York Hotel and Motel Trades Council.

The two alleged discriminatees had been detained by the immigration service, and later they returned to company premises seeking reinstatement. The reason the employer refused to reinstate them was they lacked proper work authorization papers, the judge concluded.

The judge also decided that action taken by the employer seeking to ascertain the immigration status of its employees was totally unrelated to their union activity and thus not unlawful under the Act. At the relevant time the employer had accepted the union as bargaining agent and was busily engaged in bargaining, he noted.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by N.Y. Hotel & Motel Trades Council and individual; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at New York on 20-22 May, and 12 June 1985. Adm. Law Judge Arthur A. Herman's decision issued 31 March 1986.

* * *

Timber Products Co. (36--CA--4795, 36--CA--4826; 281 NLRB No. 117) Medford, Oregon. 30 September. The Board affirmed an administrative law judge's finding that the employer illegally withdrew recognition from Woodworkers Local 3--6 at a time when it was unlawfully refusing to execute and abide by a previously agreed-upon, enforceable contract.

The Board also agreed with the judge that the employer further violated the Act by refusing to recall three former strikers and combining them with one previously recalled former striker to form a new swing shift spreader crew. Instead the employer brought in an outside crew to operate the spreader machines, claiming that the unreinstated strikers were unqualified to do the work, a contention which the judge and the Board concluded the employer failed to establish.

In disagreement with the recommended remedy, the Board concluded that backpay for the discriminatees should run until the employer offers each discriminatee the opportunity to form a spreader crew, not until the date of the judge's decision, as the judge had recommended.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Woodworkers Local 3--6; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Medford on 25 and 26 June 1985. Adm. Law Judge Burton Litvack's decision issued 27 December 1985.

* * *

Trustees of Boston University (1--CA--11061; 281 NLRB No. 215) Boston, Mass. 30 September. The Board affirmed an administrative law judge's dismissal of the complaint alleging that the employer illegally refused to bargain with the Boston University Chapter, American Association of University Professors, as representative of the full-time faculty and department chairmen.

In doing so, the Board adopted the judge's conclusion that department chairmen and full-time faculty at Boston University are managerial employees under the Yeshiva standard, 444 U.S. 762 (1980).

Originally, the Board in 1977 had found a bargaining violation and issued a bargaining order, enforced by the U.S. Court of Appeals for the First Circuit in 1978. Following its 1980 Yeshiva ruling that faculty members at that university were managerial, not employees entitled to protection of the Act, the Supreme Court recalled the judgment of the First Circuit and remanded the case for further consideration to the First Circuit, which in turn remanded the case to the Board to consider the status of Boston University faculty in light of and consistent with Yeshiva.

In the instant proceeding, the Board found that the "faculty has absolute authority over such matters as grading, teaching methods, graduation requirements, and student discipline. Additionally, the faculty is the moving force and almost always effectively controls matriculation requirements, curriculum, academic calendars, and course schedules. The faculty also plays an effective and determinative role in recommending faculty hiring, tenure, promotions, and reappointments. All of the matters listed are important facets of university policy. That ultimate authority for decision making at the University rests with the president and board of trustees does not alter the fact that, in practice, faculty decisions on all those policy matters are effectuated in the great majority of instances. Nor does the fact that the administration occasionally has made and implemented policy decisions without faculty input detract from the collegial managerial authority consistently exercised by the faculty."

(Chairman Dotson and Members Johansen, Babson and Stephens participated.)

Adm. Law Judge George McInerny's decision issued 29 June 1984.

* * *

Air Express International USA, Inc. (27--CA--9289, 27--CA--9374; 281 NLRB No. 127) Denver, Colo. 30 September. The Board affirmed an administrative law judge's unfair labor practice findings, but found an additional violation in threats to discharge two employees because of their activities for Teamsters Local 961.

Among the other violations the employer committed during a union organizing drive among its employees were the discriminatory discharge of Terry Nielson, issuance of warning letters to Nielsen, illegal interrogation of workers, threats to close the Denver facility and to refuse to bargain, and telling employees that opportunities for promotions and raises would be lost if they persisted in seeking union representation.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 961; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Denver on 4 and 5 December 1985. Adm. Law Judge James M. Kennedy's decision issued 31 March 1986.

Hercules Inc. (22--CA--13912; 281 NLRB No. 130) Parlin, N.J. 30 September. The Board upheld an administrative law judge's decision that the employer violated the Act by refusing to permit representatives of Chemical Workers Local 271 to enter its Parlin facility to investigate industrial accidents, to conduct health and safety inspections, and to conduct tests for determining the presence of toxic or hazardous fumes.

The Board modified the recommended remedy to provide that access of union representatives to the plant shall be limited to reasonable periods and at reasonable times, consistent with the times least likely to disrupt employer operations.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Chemical Workers Local 271; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Newark on 7 and 8 November 1985. Adm. Law Judge Edwin H. Bennett's decision issued 31 March 1986.

* * *

Mail Handlers Division of Laborers International Local 308 (United States Postal Service) (4--CB--5031--P; 281 NLRB No. 143) Philadelphia, Penna. 30 September. The Board sustained an administrative law judge's decision that the union violated the Act by removing Willie A. Burrell, Jr. from his position of shop steward because he had filed unfair labor practice charges against the union with the Board.

In doing so, the Board found that while motivation may be a factor to be considered in cases such as this, the internal union considerations raised by the union here could not prevail in the face of the overriding public interest in unimpeded access to the Board and the fact that the violation turned on the coercive nature of the union's conduct.

Members Stephens noted that a finding of violation was warranted under either of the views expressed in Iron Workers (Walker Construction Co.), 277 NLRB No. 99 (1985), which the Board had cited.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Philadelphia on 21 and 22 October 1985. Adm. Law Judge Irwin Kaplan's decision issued 26 March 1986.

* * *

The Harris House (20--CA--19734; 281 NLRB No. 131) Vacaville, Calif. 30 September. Since the employer failed to file an answer to the backpay specification, and did not explain its failure to file, the Board deemed the allegations of the backpay specification to be true, and granted the General Counsel's motion for summary judgment.

In May 1986 the U.S. Court of Appeals for the Ninth Circuit had enforced a previous Board order requiring the employer to make whole Robert Brown for losses resulting from his unlawful discharge.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Hotel and Restaurant Employees Local 50. General Counsel's motion for summary judgment filed 21 July 1986.

* * *

New London Convalescent Home (39--CA--2265; 281 NRLB No. 120) Waterford, Conn. 30 September. The Board affirmed an administrative law judge's supplemental decision and order requiring the employer to bargain with New England Health Care Employees District 1199, National Union of Health Care Employees, as representative of service and maintenance employees.

In an earlier decision reported at 274 NLRB No. 204, the Board found that the employer, with one exception, had failed to raise any issue properly litigable in the unfair labor practice proceeding. That issue was with respect to "the Union's disaffiliation from the Retail, Wholesale and Department Store Union and its affiliation with the National Union of Hospital and Health Care Employees." The Board concluded that a hearing should be held limited to the issue of whether the union reaffiliation after its certification comported with due process standards.

On remand, the judge concluded that the employer did not sustain its defense with regard to validity of the National's disaffiliation from RWDSU. As the Board had already found no merit to the other answers and defenses of the employer, the judge concluded that the employer illegally refused to bargain.

(Chairman Dotson and Members Johansen and Babson participated.)

Hearing at Hartford on 16 December 1985 and 22 January 1986. Adm. Law Judge Julius Cohn's supplemental decision issued 30 June 1986.

* * *

Modern Iron Works, Inc. (22--CA--13337; 281 NLRB No. 151) Trenton, N.J. 30 September. The Board sustained an administrative law judge's decision that the employer violated the Act by discharging 10 employees because they engaged in a protected concerted work stoppage in support of a larger wage increase than they had received.

The Board ordered the employer to make the 10 workers whole by paying them backpay for any earnings lost as a result of the unlawful discharge of them from the date of the unlawful discharge to the date of an offer of reinstatement.

Chairman Dotson would overrule Abilities & Goodwill, 241 NLRB 27 (1979), and would date the backpay obligation to the discharged strikers from the time they made an unconditional offer to return to work.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1). Hearing at Newark on 10 December 1984. James F. Morton's decision issued 7 March 1985.

* * *

Electrical Workers (IBEW) Local 497 (19--CB--5348; 281 NLRB No. 158) Wenatchee, Wash. 30 September. The Board ruled the union violated the Act by maintaining charges against William L. Fox and by expelling him, thereby restraining and coercing Canyon Valley Electric, Inc. in the selection and retention of its collective-bargaining and grievance adjustment representative.

The Board found a violation despite the fact that the union neither has nor seeks a collective-bargaining relationship with the employer whose grievance representative it disciplined.

The Board wrote that the Act "protects the freedom of employers to choose their representatives unimpeded by coercive union pressures on the representative to cease working for them."

The parties had waived a hearing before and a decision by an administrative law judge.

(Chairman Dotson and Members Johansen, Babson, and Stephens participated.)

Charges filed by Canyon Valley Electric, Inc.; complaint alleged violation of Act's Section 8(b)(1)(B).

* * *

St. John's General Hospital of Allegheny County---ADR Center (6--CA--14603, 6--CA--15496; 281 NLRB No. 157) Pittsburgh, Penna. 30 September. Agreeing with an administrative law judge, the Board decided that the employer unlawfully refused to bargain with Food and Commercial Workers Local 590, certified bargaining agent of professional employees including registered nurses at an alcohol and drug rehabilitation center operated by the employer.

The employer claimed that the union should be decertified because of conduct during a strike it called in support of its representative status after the employer refused to bargain.

The judge found that the employer should have bargained all along with the union, that it had made unlawful unilateral changes in employment conditions, and that the union is not disqualified to represent the workers.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Food and Commercial Workers Local 590; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Pittsburgh on 26 and 30 July and 4 and 5 August 1982. Adm. Law Judge James M. Fitzpatrick's decision issued 31 March 1983.

* * *

Teamsters Local 814 (Beth Israel Medical Center) (2--CB--9980; 281 NLRB No. 153) New York, N.Y. 30 September. The union violated the Act by refusing to process the grievance of Edwin Guzman because he had sought the assistance of the Board, the Board found in agreement with an administrative law judge.

The union handled Guzman's grievance in an arbitrary and perfunctory manner in violation of its duty to fairly represent Guzman in presenting his grievance, the judge also found with Board approval.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at New York on 16 and 17 January 1984. Adm. Law Judge Jesse Kleiman's decision issued 30 January 1986.

* * *

Super-H Discount (16--CA--9745; 281 NLRB No. 109) Owasso, Okla. 30 September. Chairman Dotson and Member Stephens reversed an administrative law judge's findings that the employer violated the Act by interrogating Sonya Gray and by promulgating an overly broad no-solicitation rule barring employees from talking "union" on the clock. Member Johansen dissented.

The panel majority concluded that a conversation in question between Gray and a supervisor was a "single, isolated, and innocuous exchange" which did not rise to the level of a violation, particularly in the absence of union animus. In dissent, Member Johansen wrote: "A supervisor's questioning of an employee about her and others' union activities is not isolated and certainly not innocuous."

Regarding the second allegation, the panel majority decided that the supervisor's cautioning Gray not to "talk union on the clock" was "so transitory as to have no impact on anyone." In dissent, Member Johansen pointed out that the warning not to talk union "not only discriminatorily singles out union talk but also implies that employees may not solicit on their own time."

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Food & Commercial Workers Local 73R; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Tulsa on 3 November 1981. Adm. Law Judge William N. Cates' decision issued 3 February 1982.

* * *

Northwest Metal Products, Inc. (19--CA--11549; 281 NLRB No. 156) Kent, Wash. 30 September. The Board affirmed a second supplemental decision of an administrative law judge, finding Phillip Hoefer is entitled to $2,395.71 in backpay.

The decision was issued pursuant to an earlier Board holding that the employer had discharged Hoefer 2 May 1979 for discriminatory reasons while he was participating in an economic strike.

In 1985 the Board ordered the judge to reopen the record based on a finding that she had erroneously barred the type of evidence contemplated in Abilities & Goodwill, 241 NLRB 27 (1979) during the backpay hearing, when she barred as speculative an employer question into whether Hoefer would have accepted an offer to return to work during the strike.

The judge in the second decision adhered to her original conclusion that the employer did not establish that Hoefer would have refused a valid offer of reinstatement if one had been made during the course of the strike.

Chairman Dotson would overrule Abilities & Goodwill and would analyze backpay in accordance with earlier precedent.

Member Stephens accepts generally Abilities & Goodwill, but he disagrees with its apparent sanctioning of the type of speculative inquiries permitted in this supplemental proceeding.

(Chairman Dotson and Members Johansen and Stephens participated.)

Adm. Law Judge Earldean V.S. Robbins' second supplemental decision issued 10 September 1985.

* * *

Electrical Workers (IBEW) Local 2148 (Newberry Industrial, Inc.) (28--CB--2271; 281 NLRB No. 112) Page, Ariz. 30 September. Upholding the findings of an administrative law judge, the Board concluded that Gary Cliff, Paul Eighmey and Tom Manson were unlawfully bypassed for work referral to a Newberry, Ariz. dam project and that if the union had operated its hiring facility in a lawful manner, it would have referred them to the project on 26 Janaury, 16 February and 6 March 1984, respectively.

In one disagreement with the judge, the Board reversed the judge's finding that Cliff's backpay period would have ended on 29 February if he had been referred to the project on 26 January.

"It is clear that the judge did not give sufficient weight to the significant fact that Cliff did not decide to give up his job at the project, despite its dangerous nature, until he had 'lined up' another job," the Board stated. It found that Cliff's backpay period extended from 26 January to 3 April 1984.

(Chairman Dotson and Members Johansen and Babson participated.)

Supplemental hearing held 19-20 February 1986. Supplemental decision of Adm. Law Judge Jerrold H. Shapiro issued 15 May 1986.

* * *

E.B. Manning & Son, Inc. (21--CA--24493; 281 NLRB No. 152) Pico Rivera, Calif. 30 September. The Board, sustaining an administrative law judge's decision, found that the employer did not meet its obligation to bargain in good faith with Teamsters Local 63, bargaining agent of all drivers and helpers, in two respects.

The employer illegally failed to sign a written contract containing agreed-upon terms of a collective-bargaining agreement, and failed to provide health and welfare benefits of the agreed-upon contract to unit employees, the judge found with Board approval.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Teamsters Local 63; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Los Angeles on 13 May 1986. Adm. Law Judge Roger B. Holmes' decision issued 11 July 1986.

* * *

Groves Truck and Trailer (19--CA--12263; 281 NLRB No. 161) Fairbanks, Alaska. 30 September. The Board agreed with an administrative law judge that employer unfair labor practices are best remedied by an order requiring the employer to bargain with the Alaska Petroleum Joint Crafts Council.

The Board considered "the serious nature of the conduct which consisted of threats of plant closure and layoffs, discriminatory partial plant closure and layoff of almost 40 percent of the unit, denial of pay increases and planned changes in benefits during the pendency of the representation matter, and the solicitation of grievances, all within the span of a month."

Although the misconduct occurred in 1980, the Board wrote that "the mere passage of time cannot easily dissipate the effects of such conduct. The passage of time, though regrettable, is not a sufficient basis for denying a bargaining order."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Alaska Petroleum Joint Crafters Council; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Fairbanks on 27, 28 and 29 January 1980. Adm. Law Judge Michael D. Stevenson's decision issued 29 May 1981.

* * *

Playboy Hotel & Casino (4--CA--13144; 4--RC--15038; 281 NLRB No. 159) Atlantic City, N.J. 30 September. The Board affirmed an administrative law judge's conclusion that a representation election conducted among the employer's casino dealers on 8 June 1982, which Laborers Local 137 lost by a vote of 277 to 240, should be set aside.

The Board also agreed with the judge that the employer violated the Act by granting a wage increase to casino dealers in March 1982 after the union had begun its organizational effort among the dealers.

The Board found merit to an employer exception to the judge's conclusion that the employer in a memo 3 May 1982 violated the Act by extending health and vacation benefits to part-time employees.

The 3 May memo, the Board found, was merely a reminder to part-time employees to sign up for health and other benefits, something which the new category of employees which the employer had created--- part-time--- had been told before.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Laborers' Local 137; complaint alleged violation of Act's Section 8(a)(1). Hearing at Atlantic City on 17 March 1983. Adm. Law Judge Walter H. Maloney, Jr.'s decision issued 3 June 1983.

* * *

Electrical Workers IBEW Local 617 (20--CB--6714; 281 NLRB No. 163) San Mateo, Calif. 30 September. The Board concluded in agreement with an administrative law judge that the union illegally refused to bargain with the San Mateo Chapter of the National Electrical Contractors Association, Inc. when it refused to sign a Manpower Reciprocal Agreement which provided for the "portability of key supervisory employees across jurisdictional lines."

The judge found that the union business agent had promised during negotiations to reinstate the MRA, as soon as a new collective-bargaining agreement was reached. Upon execution of a new agreement on 6 September 1985, the union however refused to reinstate the MRA, in violation of the Act, the judge ruled. He rejected the union argument that the promise to reinstate the MRA was non-binding because it involved a non-mandatory subject of bargaining, noting that the MRA vitally affected terms and conditions of employment.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Electrical Contractors Assoc., San Mateo Chapter; complaint alleged violation of Act's Section 8(b)(3). Hearing at San Francisco on 25 February 1986. Adm. Law Judge Harold A. Kennedy's decision issued 11 June 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Oregon Steel Mills, Inc. (Steelworkers and individuals), Portland, Oregon. 23 September. 36--CA--4837, et al.; JD(SF)--120--86, Jay R. Pollack, Adm. Law Judge

Brannan Sand and Gravel Co. (Laborers' Local 86 and Teamsters Local 13), Denver, Col. 23 September. 27--CA--9392-2, et al.; JD(SF)--110--86, Gerald A. Wacknov, Adm. Law Judge

Art Bridges Pontiac (Food and Commercial Workers Local 1095), Hayward, Calif. 22 September. 32--CA--7845; JD(SF)--118--86, James S. Jenson, Adm. Law Judge

Better Building Supply Corp., and Evergreen Roofing, Inc., Its Alter Ego (Besco Coatings), Seattle, Wash. 15 September. 19--CA--11908, 19--CA--12035; JD(SF)--115--86, George Christensen, Adm. Law Judge

Long Island University (Teachers AFT), Brooklyn, N.Y. 1 October. 29--CA--12052; JD--263--86, David L Evans, Adm. Law Judge

Carpenters' District Council of Western Pennsylvania (Bridges and Co., Inc.), Greentree, Penna. 2 October. 6--CC--1668; JD--267--86, Bernard Ries, Adm. Law Judge

Ford Brothers, Inc. (Teamsters Local 159), Kenova, Ky. 2 October. 9--CA--15848; JD--266--86, Norman Zankel, Adm. Law Judge

L.W. Le Fort Co., Inc. (Boilermakers Lodge 92), Placenta, Calif. 15 September. 21--CA--23984; JD(SF)--116--86, Frederick C. Herzog, Adm. Law Judge

Weathercraft Co. of Topeka, Inc. (Roofers Local 20(b)), Kansas City, Kan. 30 September. 17-CA-12838; JD--260--86, Elbert D. Gadsden, Adm. Law Judge

Teamsters Local 483 (Ida Cal Freight Lines, Inc.), Nampa, Idaho. 18 September. 19-CC-1715; JD(SF)--100--86, David G. Heilbrun, Adm. Law Judge

P*I*E Nationwide, Inc. (Individual), Franklin, Wis. 26 September. 30--CA--8074; JD--258--86, Marvin Roth, Adm. Law Judge

Painters District Council 2 (Contracting Painters and Decorators Assoc., Inc. St. Louis Chapter 2), St. Louis, Mo. 30 September. 14--CB--6473; JD--259--86, Russell M. King, Jr., Adm. Law Judge

American Steel Warehousing, Inc. (Steelworkers), St. Louis, Mo. 29 September. 14--CA--18332; JD--257-86, Burton S. Kolko, Adm. Law Judge

Ben Franklin Division of Household Merchandising, Inc. (Individuals), Seymour, Ind. 24 September. 25--CA--17549-11, 25--CA--17549-20; JD--234--86, George F. McInerny, Adm. Law Judge

Parma Industries, Inc. and Wolverine Metal Specialties, Inc. (Jackson Industries, Inc., and L.R.P.D. Inc., Joint Employers), Jackson, Mich. 24 September. 7--CA--23851, et al.; JD--233--86, George F. McInerny, Adm. Law Judge

Oil Field Construction Co. (Individuals), Bakersfield, Calif. 28 August. 31--CA--15384, 31--CB--6523, et al.; JD(SF)--104--86, Jerrold H. Shapiro, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

V.P. Peri Painting Co. (19--RD--2528), Seattle, Wash. 25 September. All employees, but excluding office clerical employees, guards, and supervisors as defined in the Act, shall vote for representation by Painters Local 300, or for no representation.

Saga Corp. (36--RC--4897), Seattle, Wash. 25 September. All employees, but excluding the District Manager, the Food Services Director and the Food Services Manager, confidential employees, casual employees, students, guards, and supervisors, shall vote for representation by Oregon School Employees Assoc., or for no representation.

Westlake Pavilion (13-RC-16952), Chicago, Ill. 26 September. All full time and regular part time non-professional employees shall vote for representation by Teamsters Local 743, or for no representation.

Puget Sound Hospital, Inc. (19-RC-11457), Seattle, Wash. 30 September. All non-professional employees shall vote for representation by Firemen and Oilers, or for no representation.

* * *

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 86-10 24 September 1986

TO : All Regional Directors, Officers-in-Charge, and Resident Officers

FROM : Rosemary M. Collyer, General Counsel

SUBJECT : Affidavit Experiment - New Confidentiality Statement

As you have been informed, we will begin using a revised confidentiality statement in our affidavits in October. The statement has been changed because the prehearing Jencks review contemplated by the affidavit experiment would be inconsistent with the assurances we presently provide to affiants in their statements. When we make the affidavits available in this experiment, only affidavits with the new confidentiality statement will be produced prior to trial. Accordingly, the present confidentiality paragraph will be modified as follows:

> I have been given assurances by an agent of the National Labor Relations Board that this affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in connection with a formal proceeding. Upon the closing of this case, the affidavit may be subject to disclosure only in accordance with Agency policy.

Under separate cover, each office is being sent a supply of the preprinted affidavit form (Form NLRB-5168) with the above revised language. Please begin using the revised language in cases filed on or after 20 October 1986.

The next phase of the experiment will begin as the post 20 October charges proceed to hearing which, in most cases, will be post 1 January 1987. In such cases, we will, upon request, provide copies of the affidavits with the above-modified language. We are now in the process of preparing written guidance with respect to the procedures to be used during the experiment which will be forwarded to you at a later date. Many of the excellent comments and recommendations which you previously made will be incorporated in the procedures for the experiment.

Should you encounter any problems or difficulties during the investigatory stage with the use of the modified affidavit language, please advise your Assistant General Counsel as soon as possible.

Rosemary M. Collyer

Rosemary M. Collyer

cc: NLRBU

Distribution:

Regional - All Professional Employees

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2038

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

30 SEPTEMBER 1986 W-2038

NEWARK PUBLIC LIBRARY
OCT 29 1986
U. S. GOVT. PUBS.
DEPOSITORY 328

CASES SUMMARIZED

ABS Industries, Inc. and Ashtabula Forge, Inc.	Ashtabula, O.	7
Alamo Cement Co.	San Antonio, Tex.	12
Arrow Sash and Door Co.	Irvine, Calif.	15
Arthur Briggs, Inc.	Bronx, Calif.	10
Baldwin League of Independent Schools	New York, N.Y.	11
Berger Transfer & Storage Co.	Chicago, Ill.	6
Container Transit, Inc., March Transportation Inc., et al.	Milwaukee, Wis.	14
Data Technology Corp., Plastronics Division	Dadeville, Ala.	4
Electrical Workers IBEW Local 3	Roseland, N.J.	10
Food and Commercial Workers Local P-9	Austin, Minn.	13
Hall's Super Duper	Reynoldsburg, O.	5
Hearst Corp., San Antonio Division	San Antonio, Tex.	13
Inner City Broadcasting Corp.	New York, N.Y.	8
Laborers' Local 1359	Wausau, Wis.	4
Meyers Industries, Inc.	Tecumseh, Mich.	2
Nudor Corp.	Geneva, Ind.	11
Rector Engineering and Development Corp.	New Castle, Ind.	3

LR 1.15/2:

READEX FICHE best copy available

Seven-Up Canada Dry Bottling Co. of Pittsburgh, Div. of Beverage Mgt., Inc.	Pittsburgh, Penna.	7
Teamsters Local 439	Oakland, Calif.	8
Union Boiler Co.	Nitro, W.Va.	5
U.S. Postal Service	Columbus, O.	1
U.S. Postal Service	Columbus, O.	2
Vaughan & Sons, Inc.	Houston, Tex.	3
Vincent Electric Co.	Burlington, Mass.	9
Worths Stores Corp.	St. Louis, Mo.	6

OTHER CONTENTS

List of Decisions of Administrative Law Judges 16

List of Directions of Elections by Regional Directors 17

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

United States Postal Service (9--CA--16503(P), 28--CA--6540(P); 281 NLRB No. 138) Columbus, O. and Phoenix, Ariz. 30 September. The Board ruled that the clear statutory mandate of Section 9(a) of the Act, guaranteeing to the bargaining representative an opportunity to be present at the adjustment of grievances, must prevail over Equal Employment Opportunity administrative regulations requiring anonymity of the complainant at the pre-complaint stage of an EEO proceeding.

At issue was whether the American Postal Workers Union must be given the opportunity to be present when the Postal Service adjusts or attempts to adjust EEO complaints with individual unit employees when the same incidents or course of conduct comprising those complaints are concurrently the subject of contractual grievances.

The Board concluded that the "explicit language of the Act secures this right to the bargaining representative without qualification." It held that the Postal Service was not privileged to resolve contract grievances with individual employees in derogation of the union's statutory rights.

The Board did not need to decide here whether the union would have a right to be present at grievance adjustments with individual employees in which no contract grievance had been filed because in all of the incidents at issue contract grievances had been filed, and the union was never given the notice and opportunity to be present at the adjustment of the grievances as mandated by the second proviso to Section 9(a).

Member Johansen did not agree that "an attempt to adjust grievances" at an employee's request, without more, transcends Sec. 9(a)'s reservation of the right of employees to present grievances to their employer without the intervention of the bargaining representative.

Members Babson and Stephens did not dispute that under the first proviso to Sec. 9(a) of the Act employees have the right to present grievances to their employer without the intervention of the bargaining representative. However, they concluded that under the second proviso to that section, the collective-bargaining representative must be given an opportunity to be present at a conference with an individual employee at which the individual is offered a final settlement of a pending contract grievance, whether this attempt at adjustment results in the employee's acceptance of the settlement or not. They intimated no view on what other circumstances might bring a conference on a grievance within the second proviso.

(Members Johansen, Babson and Stephens participated.)

Charges filed by American Postal Workers; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Phoenix, Arizona on 25 March 1982 and at Columbus, O. on 15 April 1982. Adm. Law Judge Clifford H. Anderson's decision issued 23 July 1982.

* * *

United States Postal Service (9--CA--18366(P); 281 NRLB No. 139) Columbus, O. 30 September. The Board concluded that the Postal Service violated the Act when it adjusted a contract grievance with an employee without affording her collective-bargaining representative the opportunity to be present at the adjustment as required by Section 9(a) of the Act.

The parties agreed that this case was controlled by the Board decision in 281 NLRB No. 138, which issued today. In that case the Board found that the clear statutory mandate of Section 9(a) must prevail over EEO administrative regulations requiring anonymity of the complainant at the pre-complaint stage of an EEO proceeding.

Member Johansen did not find that attempting to adjust a grievance necessarily violates the Act. See Postal Service, 281 NLRB No. 138.

(Members Johansen, Babson and Stephens participated.)

Charges filed by American Postal Workers; complaint alleged violation of Act's Section 8(a)(1) and (5). Case transferred directly to the Board.

* * *

Meyers Industries, Inc. (7--CA--17207; 281 NLRB No. 118) Tecumseh, Mich. 30 September. The Board reaffirmed its 1984 Meyers I decision, 268 NLRB 493, that the discharge of a nonunion employee for refusing to drive an unsafe truck after filing a complaint with a state safety agency was not unlawful because his action was not "concerted activity" under Section 7 of the Act. In its earlier decision, the Board found no evidence that the employee had joined forces with any other employee or by his activities intended to enlist the support of other employees in a common endeavor.

While the Board said it was "outraged" by the employer's conduct, the discharge was not unlawful because the employee's action was taken as an individual, not in concert with other employees. Under the standard of concerted activity adopted in Meyers I and reaffirmed in this case, to find an employee's activity to be concerted, the Board requires that it be "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself."

In February 1985, the U.S. Court of Appeals for the District of Columbia remanded Meyers I on grounds that the Board had erroneously assumed that the Act mandated its definition of concerted activities. It asked the Board to reexamine Meyers I in view of the Supreme Court's 1984 opinion in City Disposal and to explain its rationale more fully.

In Meyers II, stressing that "it is protection for joint employee action that lies at the heart of the Act," the Board said "it is therefore entirely appropriate for us to take that focus on joint employee action as the touchstone for our analysis of what kinds of activities we must find within the scope of Section 7 in order to effectuate the purposes of the Act."

The Board asserted that Meyers I is entirely consistent with City Disposal, where the court held that an individual employee's invocation of a right contained in a collective-bargaining agreement constituted concerted activity within the meaning of Section 7. The court found reasonable the Board's Interboro doctrine recognizing as concerted an individual employee's reasonable and honest invocation of a collective-bargaining right. The Board said "it is surely reasonable to conclude from the court's analysis that it deems some linkage to collective employee action to be at the heart of the 'concertedness' inquiry."

Turning to its definition of concerted activity, the Board stated that "when the record evidence demonstrates group activities, whether 'specifically authorized' in a formal agency sense, or otherwise, we shall find the conduct to be concerted." It added that its definition "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management."

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

Rector Engineering and Development Corp. (25--CA--17477; 281 NLRB No. 146) New Castle, Ind. 30 September. Absent good cause being shown for the employer failure to file a timely answer to the complaint, the Board granted summary judgment and found that the employer violated the Act by laying off six employees because of their union and protected activities and by refusing to recall nine other employees because of their union and protected activities.

The Board rejected an employer attempt to invoke a bankruptcy petition as a defense to its failure to file an answer to the complaint.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by United Auto Workers; complaint alleged violation of Act's Section 8(a)(1) and (3). General Counsel's motion for summary judgment filed 24 March 1986.

* * *

Vaughan & Sons, Inc. (23--CA--10132; 281 NLRB No. 144) Houston, Tex. 30 September. The Board agreed with an administrative law judge that the employer failed to establish that it had a good-faith doubt of the majority status of Sheet Metal Workers Local 54 at the time it withdrew recognition.

Member Babson agreed with the judge's conclusion that the respondent did not have a good-faith doubt of the union's majority status based on objective considerations sufficient to justify its withdrawal of recognition. In so doing, Member Babson considered it unnecessary to rely on the judge's finding that the General Counsel affirmatively proved that the union in fact enjoyed majority status.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Sheet Metal Workers Local 54; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at Houston on 10 November 1985. Adm. Law Judge Philip P. McLeod's decision issued 9 June 1986.

* * *

Laborers' Local 1359 (30--CD--118; 281 NLRB No. 140) Wausau, Wis. 30 September. Employees of Krall's Masonry, Inc., represented by Laborers' Local 1359, were awarded the work of operating forklifts used in connection with Krall's masonry work at the Marathon County Health Care Center, Wausau, Wisconsin, jobsite.

Another union--Operating Engineers Local 139--filed a grievance concerning the disputed work, but did not engage in threats of picketing or picketing. Rather, it was the Laborers that threatened to picket and did picket to protest reassignment of the disputed work to employees represented by the Operating Engineers. In these circumstances the Board declined to issue a broad award, limiting the present determination to be particular controversy which gave rise to this proceeding.

The Board relied on the factors of collective-bargaining agreements, employer preference and past practice, area practice, relative skills, economy and efficiency of operations and prior Board decisions.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Krall's Masonry, Inc.; complaint alleged violation of Act's Section 8(b)(4)(D).

* * *

Data Technology Corp., Plastronics Division (10--RC--13226; 281 NLRB No. 136) Dadeville, Ala. 30 September. The Board refused to adopt the hearing officer's recommendation that challenges be sustained to the ballots of eight probationary employees terminated in November 1985 during a layoff attributable to lack of work.

Finding the eight employees had a reasonable expectation of recall at the time of the election, the Board overruled challenges to their ballots, and directed the regional director to open and count their ballots. The initial election tally showed 64 votes for and 64 votes against representation by the Rubber Workers, as well as the challenged ballots.

The Board has traditionally held that laid-off employees are eligible to vote in a Board election only if they have a reasonable expectancy at the time of the election of being recalled in the near and foreseeable future.

In the instant case the Board placed particular emphasis on record evidence that the employer had a prior history of rehiring substantial numbers of probationers who had been terminated due to lack of work.

Contrary to another hearing officer recommendation, the Board overruled an objection alleging solicitation of the identities of union supporters because the objectionable conduct occurred outside the critical election period, that is, before the election petition was filed.

(Members Johansen, Babson and Stephens participated.)

* * *

Union Boiler Company (9--CA--22661; 281 NLRB No. 148) Nitro, W.Va. 30 September. Sustaining the finding of an administrative law judge, the Board concluded that the employer violated the Act by unilaterally changing conditions of employment of its boilermakers during the life of an effective collective-bargaining agreement negotiated by Boilermakers Local 667.

The employer committed a further bargaining violation, the judge found with Board approval, by denying regular employment to its boilermaker employees in retaliation for their adherence to the terms and conditions of the proper collective-bargaining agreement in effect.

The Board did not adopt the judge's implied finding that the employer conduct vioalted Section 8(a)(3) of the Act which prohibits illegal discrimination because the General Counsel did not allege that the employer violated Section 8(a)(3) in any manner. The complaint involved solely Section 8(a)(5) and (1) allegations, it was noted.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Boilermakers. Hearing at Charleston, W.Va. on 10 April 1986. Adm. Law Judge Thomas A. Ricci's decision issued 26 June 1986.

* * *

Hall's Super Duper (9--RC--14455; 281 NLRB No. 150) Reynoldsburg, O. 30 September. The Board decided that the separate unit of meat department employees requested by Food and Commercial Local 346 is not appropriate in the circumstances of this case, and then it dismissed the election petition.

The meat department employees perform relatively simple tasks in the handling of boxed and prepackaged meats. Their jobs do not entail the use of traditional meatcutting skills. In these circumstances, the Board concluded, the "presumption" that separate meat department units are appropriate does not apply.

Turning to the fact that meat department employees previously have been represented in a separate unit, the Board wrote: "Any weight normally accorded such bargaining history is lessened here by the fact that such separate representation ended approximately 2 years before the instant petition was filed and, most significantly, that the Employer's meat department business had changed over to the handling of prepacked meats and boxed beef in the interim."

(Members Johansen, Babson and Stephens participated.)

* * *

Worths Stores Corp. (14--RC--10085; 281 NLRB No. 160) St. Louis, Mo. 30 September. The Board disagreed with the Regional Director's recommendation that an employer election objection be sustained and that the election be set aside based on his finding that an altered facsimile ballot circulated by the Leather Goods Workers tended to mislead employees into believing that the Board favored the union.

The Board examined the nature and the contents of the document in question and concluded that the material presented itself as propaganda and that the employees were capable of evaluating it as such.

The Board certified that a majority of valid ballots had been cast for union representation and that the union is bargaining agent of all warehouse employees including truckdrivers.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

Berger Transfer & Storage Co. (13--CA--18752; 281 NLRB No. 155) Chicago, Ill. 30 September. Members Johansen and Stephens upheld an administrative law judge's supplemental backpay decision finding that 23 discharged strikers are entitled to backpay for losses caused by employer unfair labor practices, as found in a 1980 decision reported at 253 NLRB 5, and enforced by the U.S. Court of Appeals for the Seventh Circuit in 1982.

Dissenting Chairman Dotson would overrule Abilities & Goodwill, 241 NLRB 27 (1979) and find that the employer had no backpay obligation.

In Abilities & Goodwill the Board held that discharged strikers are entitled to backpay until the employer acts to clear any ambiguity it created by its unlawful conduct.

The judge in this case concluded that the employer failed to establish that the employees who were discharged would have continued to strike even though they had not been discharged, and then ruled that the employees are entitled to backpay.

The majority affirmed the judge's conclusion that an alleged offer of reinstatement to three of the discharged strikers did not toll their backpay because it was vague and did not clearly rescind their discharges.

(Chairman Dotson and Members Johansen and Stephens participated.)

Hearing at Chicago on 15 June 1983. Adm. Law Judge James T. Youngblood's supplemental decision issued 7 December 1983.

ABS Industries, Inc. and Ashtabula Forge, Inc. (8--CA--16255--2, --3; 281 NLRB No. 145) Ashtabula, O. 30 September. The Board in agreement with an administrative law judge concluded that the respondents were under no duty to bargain with the Steelworkers regarding its decision to close the Ashtabula Forge facility and to relocate the work performed there.

Members Johansen and Babson found that under any of the analyses set forth in Otis Elevator, 269 NLRB 891 (1984), that the employer's plant closure was not a mandatory subject of bargaining.

Regarding other allegations, the employer acknowledged that it had a legal duty to bargain with the union over the effects of the Ashtabula facility closing, but it contended, contrary to the union and the General Counsel, that it did engage in good faith bargaining over the effects of the closing.

Agreeing with the employer, the judge wrote: "Given the financial circumstances of the Respondents at the time bargaining sessions took place I find that Respondents efforts in the bargaining sessions satisfied their legal duty to bargain in good faith over the effects of the closing of the plant."

Regarding still other allegations, the Board agreed with the judge that the employer did violate the Act by refusing to execute an agreement reached with the union in 1981 and by refusing to comply with a union request for information.

(Chairman Dotson and Members Johansen and Babson particpated.)

Charges filed by Steelworkers; complaint alleged violation of Act's Section 8(a)(1), (3), and (5). Hearing at Ashtabula on 4 and 9 March 1985. Adm. Law Judge Wallace H. Nations' decision issued 6 December 1985.

* * *

Seven-Up Canada Dry Bottling Co. of Pittsburgh, Division of Beverage Management, Inc. (6--CA--18437; 281 NLRB No. 128) Pittsburgh, Penna. 30 September. The Board upheld an administrative law judge's decision that the employer illegally refused to bargain with Teamsters Local 249 after the company converted its delivery driver positions into driver salesmen positions, thereby merging selling and distribution functions, which had been performed separately, into the same job classification.

As put by the judge, "the onus was upon Respondent to show that the 27 jobs removed from Local 249's unit were displaced by creation of a new classification so dissimilar as to give the Employer a free hand..." However, the employer failed to meet that burden.

Accordingly, the judge concluded, because the employer did not demonstrate that its operational change modified the unit historically represented by Local 249 to an extent legitimizing its withdrawal of recognition, repudiation of the subsisting contract, and establishment of wages, hours and conditions of employment without consent of the union, the employer in each of those severalrespects violated Section 8(a)(5).

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 249; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Pittsburgh on 17 January 1986. Adm. Law Judge Joel A. Harmatz's decision issued 31 March 1986.

* * *

Teamsters Local 439 (Tracy American Ready Mix Co., Inc.) (32--CB--2187, 32--CB--2247; 281 NLRB No. 164) Oakland, Calif. 30 September. The Board reversed an administrative law judge's conclusion that the union lawfully disciplined Paul McMillen because he returned to work during a strike before his resignation from the union had become effective.

The determinative issue was whether the union effectively received McMillen's resignation when he left it in the union night deposit box--- which the union maintained for receipt of written materials outside of regular business hours--- around midnight on 22 August 1985, or when the union discovered it the next morning when its business office opened, about 70 minutes after McMillen returned to work.

The Board concluded that McMillen was not unlawfully subject to discipline for that return to work, because he had placed his resignation in the union's possession by depositing it in the box designated for after-business-hours deliveries before he abandoned the strike and returned to work.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Oakland on 12 February 1986. Adm. Law Judge Richard D. Taplitz's decision issued 4 April 1986.

* * *

Inner City Broadcasting Corp. (2--CA--20031, et al.; 281 NLRB No. 162) New York, N.Y. 30 September. The employer violated the Act by failing to apply and unilaterally terminating severance pay provisions in its 1980 to 1983 contracts with American Federation of Television and Radio Artists upon their expiration, threatening an employee with discharge because she did not sign a petition to decertify the union, and creating an impression of surveillance of employee activity, the Board found in agreement with an administrative law judge.

Other allegations were dismissed, including one dealing with the discharge of Marleane Furtick. The Board agreed with the judge that the employer met its burden of showing that Furtick's discharge would have occurred even absent her protected conduct.

The judge found that employer memoranda enumerating various on-the-air mistakes by radio announcer Furtick were not motivated by desire to retaliate

against her because she refused to sign the employee petition, and that her discharge was simply one part of the employer response to a substantial decline in its ratings. These findings, the Board said, supported the employer claim that Furtick was discharged for failure to improve her on-the-air performance.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Television Artists AFTRA; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at New York, May and June 1985. Adm. Law Judge Raymond P. Green's decision issued 10 February 1986.

* * *

Vincent Electric Co. (1--UD--189; 281 NLRB No. 122) Burlington, Mass. 30 September. Finding that the employer had designated a multiemployer association as its collective-bargaining representative and agreed to become part of the multiemployer group, Members Johansen and Babson dismissed the deauthorization petition because they found the unit encompassed by the petition, which includes employees of the employer only, inappropriate.

Chairman Dotson agreed with the Regional Director that Vincent Electric never intended to become, nor did it ever become, part of a multiemployer bargaining group. He would find the unit confined to employees of Vincent Electric is appropriate and would direct a deauthorization election in the single employer unit.

Electrical Workers IBEW Local 588 contended that the Regional Director's decision is contrary to established Board precedent holding that an employer which signs an IBEW "Letter of Assent-A," as the employer did here, thereby authorizes a multiemployer association to act as its bargaining representative and unequivocally agrees to become part of a multiemployer bargaining group.

The panel majority noted that IBEW local unions have been using letters of assent identical in all material respects to the letter of assent signed by the employer over 20 years, and the Board consistently has held that an employer which signs a Letter of Assent-A has agreed to become part of a multiemployer group.

The majority further stated that the Board in a number of subsequent cases has reaffirmed the principle that an employer which signs an IBEW Letter of Assent-A thereby becomes a part of the multiemployer bargaining group, and that this principle is applicable in this case.

Chairman Dotson concluded that while Vincent Electric signed the IBEW letter of assent, at the same time it engaged in a course of individual bargaining which belied the clear evidence of the required unequivocal intent to be mutually bound by group bargaining.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Electrical Workers IBEW Local 3 (22--CB--5394; 281 NLRB No. 147) Roseland, N.J. 30 September. Sustaining the finding of an administrative law judge, the Board held that the union illegally threatened to strike Burroughs Corporation in order to force that employer to negotiate a new agreement after the parties' existing contract had been automatically renewed.

The union misconduct, the Board commented, was not only in derogation of the automatic renewal clause but constituted repudiation of the contract. It is analogous to unlawful union pressure to force employers who are members of multiemployer associations to abandon existing labor agreements, the Board added.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Burroughs Corp.; complaint alleged violation of Act's Section 8(b)(3). Hearing at Newark on 16 December 1985. Adm. Law Judge Howard Edelman's decision issued 27 May 1986.

* * *

Original Oyster House (6--CA--15962; 281 NLRB No. 154) Pittsburgh, Penna. 30 September. The Board ordered the employer to pay Delores DeGeer the sum of $15,199.16; Doreen Dunmire, $25,446.77; and Denise Churchel, $471.08.

The U.S. Court of Appeals for the Third Circuit in 1985 enforced a Board decision, reported at 270 NLRB No. 94, ordering the employer to reimburse the three waitresses for losses caused by illegal termination and reduction in hours.

In agreement with an administrative law judge, Members Johansen and Stephens found reasonable the General Counsel's formula for calculating tip income of the three discriminatees. They noted they were not unmindful of the claimants' contrary tip income disclosures to the Internal Revenue Service, but stated that the Board, consistent with Hacienda Hotel and Casino, 279 NLRB No. 84, shall furnish a copy of this supplemental decision to the Internal Revenue Service.

Chairman Dotson, for reasons set forth in his dissent in Hacienda Hotel, would compute backpay on the basis of the claimants' reported tip income to the Internal Revenue Service.

(Chairman Dotson and Members Johansen and Stephens participated.)

Backpay hearing at Pittsburgh, 17 Oct. and 19 Nov. 1985. Charges filed by individual. Adm. Law Judge Lowell Goerlich's Decision in Backpay Proceeding issued 1 May 1986.

Arthur Briggs, Inc. (2--CA--17519, 2--CA--17825; 281 NLRB No. 114) Bronx, Calif. 30 September. Members Johansen and Babson concluded that the total backpay owed Paul Lynch is $13,461.35, plus interest.

The backpay period covered 10 calendar quarters. As Lynch willfully concealed his earnings for the first two quarters, an administrative law judge properly denied him backpay for that time, the panel majority ruled.

In dissent, Chairman Dotson, noting the willful concealment of sizeable earnings, would hold an award for any quarter under this circumstance is inappropriate. He relied on reasons set forth in his separate opinion in Ad Art, Inc., 280 NLRB No. 114 (1986). "Fradulent deception and willful concealment are not permissible on a quarterly basis," the Chairman stated.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Ladies' Garment Workers Local 155; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at New York on 9 and 10 May 1984. Adm. Law Judge Howard Edelman's decision issued 13 August 1984.

* * *

Nudor Corp. (25--CA--13997, 25--CA--15642; 281 NLRB No. 126) Geneva, Ind. 30 September. The Board decided that an administrative law judge had mistakenly decided and dismissed 8(a)(1) and (3) allegations in the complaint which had led to a settlement agreement in Case 25--CA--13997, while, at the same time, finding it unnecessary to resolve those allegations of postsettlement complaint in Case 25--CA--15642.

Accordingly, the Board found that the issue in Case 25--CA--15642 as to the respondent's refusal to reinstate Jack Hough has not been considered by the judge; that it first must be considered before any analysis of the allegations in Case 25--CA--13997 should be undertaken; thus the Board ordered this proceeding be remanded to the judge for further decision.

The Board has often held that an unfair labor practice will not be found based on presettlement conduct unless there has been a failure to comply with the settlement agreement, or subsequent unfair labor practices have been committed, the Board said in remanding.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Electrical Workers UE; complaint alleged violation of Act's Section 8(a)(1), (3) and (4). Adm. Law Judge Peter E. Donnelly's decision issued 11 June 1984.

* * *

Baldwin League of Independent Schools (2--CA--18638, 2--CA--18886; 281 NLRB No. 134) New York, N.Y. 30 September. The Board granted motion for summary judgment, but only with respect to Case 2-CA-18886, finding that the employer illegally refused to bargain with American Federation of Teachers, Local 2, certified as bargaining agent of all part-time subject matter teachers and reading tutors at Baldwin, Emerson and Riverdale Schools.

In Case 2-CA-18638, the Board denied motion for summary judgment, severed this case and remanded it to the Regional Director for further appropriate action. The Board took this action because the Acting Regional Director had failed to determine the status of librarians and to ascertain, in a Sonotone election, the desires of teachers and specialists as to inclusion in a unit with libararians should the librarians be found to be nonprofessionals.

The unit found appropriate by the Acting Regional Director may well have included both professional and nonprofessional employees, the Board noted. If librarians are in fact nonprofessional employees, the Acting Regional Director's unit determination contravenes Section 9(b) of the Act, the Board added.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Alamo Cement Company (23--CA--9937, 23--CA--10023; 281 NLRB No. 110) San Antonio, Tex. 30 September. On a stipulated record, the Board dismissed an allegation that the employer committed a bargaining violation when it unilaterally announced a 25-cent increase in rental fees charged by a third-party supplier for uniforms furnished certain employees represented by Cement Workers Local 560.

The Board concluded that the increase in the uniform rental fee did not constitute a material, substantial, and significant change in terms and conditions of employment of bargaining unit employees and therefore it did not give rise to any bargaining obligation.

In partial dissent, Members Stephens would find no violation under the "unilateral change" theory, but in his view the record did show a violation in the "Respondent's flat refusal to bargain after the announcement of the fee increase prompted a request by the Union to bargain about the uniform rental fees."

Member Johansen said he could not find that the complaint put into issue an overall refusal to bargain about uniforms, that the complaint, with respect to the uniform rental fees, alleged only that the employer's actions regarding the 25-cent increase violated the Act.

Chairman Dotson agreed that the complaint limited the issue and therefore he did not reach the "second issue" the dissent addressed.

Member Stephens would find the employer acted illegally by engaging in a "blanket, categorical refusal" to discuss any aspect of the rental of uniforms issue.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Cement Workers Local 560; complaint alleged violation of Act's Section 8(a)(5) and (1).

* * *

The Hearst Corp., San Antonio Light Division (23--CA--7871, 23--CB--2391; 281 NLRB No. 113) San Antonio, Tex. 30 September. The Board agreed with an administrative law judge that the employer did not have a good-faith doubt of Local 25's continuing majority status when it withdrew recognition on the basis of decertification petitions signed by a majority of employees, and that the employer therefore violated the Act by withdrawing recognition of the union in March 1980 and by later unilaterally changing pay, fringe benefits and working conditions.

The Board concluded that the employer had not met its burden of showing that the decertification petitions were untainted by employer labor practices.

Although he agreed with the results reached by his colleagues in this case, Chairman Dotson does not share their view that the commission of unfair labor practices, of the type engaged in by the respondent here, should, ipso facto, bar an employer from attempting to establish, through independent evidence, that a decertification petition, signed by a majority of its employees, was not tainted by that unlawful conduct.

Regarding union allegations, the Board found that the union demanded Hearst Corp. to continue deducting dues from wages of employees who lawfully had resigned union membership and maintained and enforced a constitutional provision restricting the right of members to resign, thereby violating the Act.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by San Antonio Newspaper Guild Local 25 and [illegible]st Corp.; complaint alleged violation of Act's Section 8(a)(1) and (5) and 8(b)(1)(A) and (2). Hearing at San Antonio on 29-31 October, and 18-20 November 1980. Adm. Law Judge William J. Pannier III's decision issued 30 June 1981.

* * *

Food and Commercial Workers Local P-9 (18--CC--1091, et al.; 281 NLRB No. 135) Austin, Minn. 30 September. The Board agreed with an administrative law judge that the union committed illegal secondary activity by picketing and handbilling at seven banks in furtherance of its primary labor dispute with Geo. A. Hormel & Company.

However, the Board held that the judge erred in his analysis of the legality of the handbilling. The judge concluded that the banks "distribute" products of Hormel, and therefore it was necessary to determine whether the union handbilling comported with the publicity proviso to Section 8(b)(4) of the Act. He proceeded to find that the union handbills were not protected by the publicity proviso because they were untruthful.

Although the Board agreed with the result reached by the judge, the Board reversed his finding that a producer-distributor relationship existed between Hormel and the banks, and therefore the Board found that the publicity proviso did not apply to the union handbilling.

The Board concluded that the handbilling does not fall within the ambit of the publicity proviso because there was no basis for finding that the banks distribute Hormel's products.

Noting that Hormel produces meat products and that the banks have no connection with distribution of Hormel's food products, the Board wrote: "It cannot reasonably be concluded that one of Hormel's products is 'revenue.' Hormel 'produces' revenue only in the general sense that any business does--- by selling its products to customers. To find that Hormel produces revenue within the meaning of the publicity proviso could mean that any person or business that has any contact with any money generated by Hormel is a distributor of Hormel's products, and therefore may be enmeshed in any of Hormel's primary labor disputes. Such a result would be at odds with the plain meaning and purpose of the limitation of protection in the proviso to 'publicity that is designed to create consumer pressure on secondary employers who distribute the primary employer's products.'"

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Geo. A. Hormel & Co.; complaint alleged violation of Act's Section 8(b)(4)(ii)(B). Hearing at Minneapolis on 3-5 December 1985. Adm. Law Judge Thomas D. Johnston's decision issued 26 February 1986.

* * *

Container Transit, Inc., March Transportation, Inc., et al. (30--CA--6893, et al.; 281 NLRB No. 141) Milwaukee, Wis. 30 September. The Board agreed with an administrative law judge that respondent March Transportation is neither an alter ego nor disguised continuance of Container Transit and therefore dismissed allegations of illegal refusal-to-bargain with Teamsters Local 200, of discrimination, and of acts of restraint and coercion of employees.

Charges against Teamsters Local 200 were disposed of by a settlement agreement in July 1983 with the General Counsel, which was approved by the Board. The 1983 settlement agreement also disposed of allegations against Container Transit and several companies affiliated with it. As part of that settlement, Container withdrew its answer to the complaint and made a payment of $80,000. Respondent March opposed the 1983 settlement with the union and its appeal in that respect was denied by the Board.

In agreeing with the judge that March, including its related companies, is not a successor to Container Transit, the Board relied only on his finding that owner-operators and nonowner drivers working for March are not employees of March. The Board agreed with the judge that March's tractor lessors are independent contractors, and that March had established nondiscriminatory, business reasons for its use of independent contractors.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 200 and various individuals; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Milwaukee on

various dates between 13 June 1983 and 6 February 1984. Adm. Law Judge Stephen J. Gross' decision issued 29 August 1985.

* * *

Arrow Sash and Door Co. (21--CA--22503, 21--CA--22832; 281 NLRB No. 149) Irvine, Calif. 30 September. The Board, with Chairman Dotson dissenting in part, agreed with an administrative law judge that the employer violated the Act by unilaterally terminating an agreement to extend the expiration date of its labor agreement with Carpenters Local 2172 and the Orange County District Council of Carpenters; cancelling scheduled negotiations; withdrawing concessions it had made and withdrawing from tentative agreements it had reached during prior bargaining; and ceasing further contributions to union health and pension funds and implementing its own health plan.

Chairman Dotson did not agree that the employer withdrawal of concessions it had made and from tentative agreements it had reached with the unions was unlawful. He found that the reason offered by the employer for its action---that the unions had sanctioned an employee sickout in breach of a no-strike provision---did not indicate lack of good faith. He would find Farm Boy Restaurants, 279 NLRB No. 13 (1986) controlling, a decision where the Board found an employer withdrawal of a tentative agreement was not unlawful because the employer had demonstrated good reason for doing so.

Members Babson and Stephens noted that the evidence had failed to establish that the union sanctioned, condoned or in any way encouraged the sickout, that under the totality of circumstances test of Farm Boy, the employer withdrawal from tentative agreements and from concessions violated the Act. They pointed out that the employer action was in conjunction with cancellation of the extension of an existing contract, unilateral cessation of payments to union funds and unilateral implementation of a new health plan.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Carpenters Local 2172 and Orange County District Council of Carpenters; complaint alleged violation of Act's Section 8(a)(5) and (1). Adm. Law Judge George Christensen's supplemental decision issued 23 January 1986.

* * *

National Gypsum (1--CA--21122; 281 NLRB No. 96) Portsmouth, N.H. 29 September. Citing its recent decision in Harter Equipment, the Board reversed an administrative law judge's finding that the employer's continued operation of its business with temporary replacements after locking out its union-represented employees violated the Act.

In Harter Equipment, 280 NLRB No. 71 (June 24, 1986), which issued after the judge's decision, the Board overruled Inland Trucking and held that "an employer does not violate Section 8(a)(3) and (1), absent specific proof of antiunion motivation, by using temporary employees in order to engage in business operations during an otherwise lawful lockout, including a lockout initiated for the sole

purpose of bringing economic pressure to bear in support of a legitimate bargaining position." In the instant case, the General Counsel had not found proven specific antiunion motivation or any illegality in the lockout itself. Accordingly, the Board dismissed the complaint.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Boilermakers Local 88; complaint alleged violation of Act's Section 8(a)(3) and (1). Hearing at Boston on 30 November, 1 December 1983, and 3 January 1984. Adm. Law Judge Robert A. Giannasi's decision issued 6 November 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

BASF Wyandotte Corp. (Chemical Workers Local 227), Parsippany, N.J. 30 September. 3-CA-11860, 3-CA-12041; JD(NY)--91--86, Jesse Kleiman, Adm. Law Judge

Tube Methods, Inc. (UAW Local 464), Bridgeport, Penna. 9 October. 4--CA--15609; JD--268--86, Robert A. Giannasi, Adm. Law Judge

Safeway Stores, Inc. (Individual), Santa Fe Springs, Calif. 24 September. 21--CA--24369; JD(SF)--119--86, Gordon J. Myatt, Adm. Law Judge

Bell Energy Management Corp., et al. (Operating Engineers Local 295-295C), New York, N.Y. 8 October. 2-CA-21385; JD(NY)--93--86, Steven Davis, Adm. Law Judge

Country Crest Creations Ltd. (Individual), Brooklyn, N.Y. 8 October. 29-CA-12371; JD--271--86, Nancy M. Sherman, Adm. Law Judge

Fortinbras Services Inc. d/b/a Darbar Indian Restaurant (Hotel and Restaurant Employees Local 100), New York, N.Y. 8 October. 2-CA-21111, 2-CA-21246, 2-RC-19980; JD(NY)--90--86, Raymond P. Green, Adm. Law Judge

Teamsters Local 792 (Johnson Bros. Wholesale Liquor Co.), St. Paul, Minn. 8 October. 18--CB--1590; JD--265--86, Marvin Roth, Adm. Law Judge

SDC Investment, Inc. (Food and Commercial Workers Local 498), Dixon, Calif. 23 September. 20-CA-19782, 20-RC-15319; JD(SF)--117--86, David G. Heilbrun, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

National By-Products, Inc. (33-RC-3137), Peoria, Ill. 6 October. All full-time and regular part-time employees shall vote for representation by Food & Commercial Workers District Local 431, or for no representation.

Maplehurst Deli-Bake, Inc. (25-RC-8380), Avon, Ind. 7 October. All full-time and regular part-time production employees, maintenance employees and warehouse employees shall vote for representation by Teamsters Local 135, or for no representation.

Uniform Rental Systems, Inc. (13-RC-16974), Chicago, Ill. 8 October. All full-time and regular part-time route salesmen, including utility route salesmen shall vote for representation by by Teamsters Local 712, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2039

NEWARK PUBLIC LIBRARY

NOV - 3 1986

U. S. GOVT. PUBS.
DEPOSITORY 376

October 15, 1986

For: The Commissioners

From: T. A. Rehm, Assistant for Operations, Office of the EDO

Subject: WEEKLY INFORMATION REPORT - WEEK ENDING OCTOBER 10, 1986

A summary of key events is included as a convenience to those Commissioners who may prefer a condensed version of this report.

Contents	Enclosure
Administration	A
Nuclear Reactor Regulation	B
Nuclear Material Safety and Safeguards	C
Inspection and Enforcement	D
Nuclear Regulatory Research	E
General Counsel	F*
International Programs	G
State Programs	H*
Resource Management	I*
Analysis and Evaluation of Operational Data	J*
Small & Disadvantaged Business Utilization & Civil Rights	K
Regional Offices	L*
CRGR Monthly Reports	M*
Executive Director for Operations	N
Items Addressed by the Commission	O
Meeting Notices	P
Proprietary or Other Sensitive Information (Not for external distribution)	Q

*No input this week.

T. A. Rehm, Assistant for Operations
Office of the Executive Director
for Operations

Contact:
T. A. Rehm, EDO
492-7781

LR 1.15/2:

HIGHLIGHTS OF WEEKLY INFORMATION REPORT

WEEK ENDING OCTOBER 10, 1986

Oyster Creek Nuclear Generating Station

On October 1, 1986, GPU Nuclear (the licensee) issued a press release stating that Oyster Creek has become only the fourth unit in the United States to have ten specific training programs accredited by the National Nuclear Accrediting Board. The Accrediting Board is an independent group comprised of scholars and executives from utilities, post-secondary schools, non-nuclear training institutes and individuals nominated by the Nuclear Regulatory Commission. Its activities support the National Academy for Nuclear Training. The ten training programs accredited are: senior reactor operator, reactor operator, non-licensed operator, shift technical advisor, instrument and control technicians, electrical main-tenance, mechanical maintenance, chemistry technician, radiological protection technicians and technical training of technical staff and managers. With accreditation, Oyster Creek also becomes a training branch of the National Academy for Nuclear Training which is administered by the Institute of Nuclear Power Operations.

V. C. Summer

The plant shut down this morning, October 7, 1986, in accordance with technical specifications due to unknown reactor coolant system leakage just exceeding 1.0 gpm. An unusual event has been declared. The licensee is looking for the leakage source and the NRC staff is following their progress.

Erwin Tennessee Water Treatment Plant

The Tennessee Department of Health and Environment informed Region II of elevated readings of total uranium activity in a sewage sludge sample from the Erwin Tennessee Water Treatment Plant. State of Tennessee representatives reported values of 700 to 800 pCi/gm in sludge collected during August 1986. (This corresponds to about 0.12 percent of uranium which is licensable.) Gross alpha values from first quarter samples were reported as 300 pCi/gm. The State indicated that the range in sludge from other areas of the State was 10 to 30 pCi/gm. Region II and NMSS are reviewing the findings. The sludge will be reanalyzed to confirm the findings, this includes analysis of uranium isotopes and its daughter products to determine if enriched uranium is found in the sludge. Pending the findings, an appropriate agency course of action will be taken. NFS has been notified of these findings.

Babcock & Wilcox Informal Hearing - Apollo, PA

The public hearing on the Volume Reduction Services Facility proposed by B&W for commercial incineration and compaction of low-level waste at its Parks Township site was held on September 30 through October 2 in Apollo, PA, by Administrative Judge Oscar H. Paris of the ASLBP. While the staff is not a party to this informal proceeding, members of FC and OGC were present to respond to questions by Judge Paris. Proposed findings are to be submitted by the applicant, B&W, to Judge Paris by October 23, 1986, and by the petitioners by October 30, 1986. Replies to the proposed findings are to be submitted one week later.

OFFICE OF ADMINISTRATION

Week Ending October 10, 1986

ADMINISTRATION OF THE FREEDOM OF INFORMATION ACT

STATUS OF REQUESTS

	Initial Request	Appeal of Initial Decision
Carryovers, 1985	181	15
Received, 1986	730	196
Granted	551	77
Denied	164	57
Pending	196	77

ACTIONS THIS WEEK

Received

Jeff Light, Syracuse Herald-Journal (86-716)	Requests copies of all correspondence to and from Representative George Wortley for the years 1984 to the present.
(NRC employee) (86-717)	Requests records regarding an OIA investigation.
Linda Bauman, Government Accountability Project (86-718)	Requests copies of all records related to non-compliance of an NRC fire protection rule issued in November 1980 at the D.C. Cook nuclear power plant.
Al Stern, Al Stern Associates (86-719)	Requests a list of those who requested SBIR Pre-Solicitation information from the September 1986 Pre-Solicitation Announcement.
Dale Hollar, Carolina Power & Light Company (86-720)	Requests copies of all records related to allegations by a named individual concerning the Shearon Harris nuclear power plant and NRC's investigation of such allegations.
Richard Dyer, University of Arizona (86-721)	Requests specific information on the FOIA.

CONTACT: Donnie H. Grimsley
492-7211

Received, Cont'd

Charlotte Burandt, Pennies from Heaven (86-722)	Requests a list of persons, organizations, countries, and federal or state agencies that have unclaimed or abandoned property or assets held or controlled by the NRC.
Charles Barnes (86-723)	Requests copies of three specified records cited on page 42 of NUREG-1198.
Linda Bauman, Government Accountability Project (86-724)	Requests copies of records related to the release of radioactive gas at the Kewaunee nuclear power plant.
Linda Bauman, Government Accountability Project (86-725)	Requests copies of all records related to the June 16-18, June 24, and July 7-17, 1986, inspection of TERA's QA Program for the Comanche Peak nuclear power plant, inspection report Nos. 50-445/86-17, 50-446/86-14.
Linda Bauman, Government Accountability Project (86-726)	Requests copies of all records related to the May 30, 1986 letter from Thomas Westerman to the Texas Utilities Generating Company regarding 4-86-A-019.
(An individual requesting information) (86-727)	Requests to be advised of the date of any report concerning allegation No. RI 84-A-0086 regarding the harassment of Nine Mile Point Unit 2 quality assurance auditors.
Don Weinstein, World Time Corporation of America (86-728)	Requests copies of the applications and any accompanying attachments for licenses 31-12593-02E, Seiko Time Corp., and 04-19004-02E, Citizen Watch Co. of America, Inc.
David Repka, Bishop, Liberman, Cook, Purcell & Reynolds (86-729)	Requests copies of all records interpreting or establishing policy regarding the notification requirement of 10 CFR 50.72 and 50.73, specifically NRC guidance on the issue of timing of required reports.
Kristine Albrecht, Food Irradiation Response (86-730)	Requests a list of all licensees in Status 4.
Billie P. Garde, Government Accountability Project (86-A-194-86-272) (86-A-195-86-454)	APPEAL TO THE EDO for the release of four denied records in NRC's September 4, 1986 response to requests for records related to the evaluation of ISAP's concerning the Comanche Peak nuclear power plant.

Received, Cont'd

Stevi Stephens, Nuclear Awareness Network (86-A-196-85-595)	APPEAL TO THE COMMISSION for records related to Kansas Gas and Electric's Corrective Action Report #7 regarding the Wolf Creek nuclear power plant.

Granted

Michael Nolan, Concerned Citizens Communications (86-650)	In response to a request for copies of a Memorandum of Understanding between the NRC and EPA and EPA and NRC inspection reports regarding control of certain areas contaminated with radioactive materials, informed the requester that the NRC and EPA never entered into a memorandum of understanding regarding the above subject. Informed the requester that seven inspection reports subject to this request are already available at the PDR.
Thomas W. Bishop, O'Brien-Kreitzberg & Associates, Inc. (86-679)	In response to a request for records concerning NRC evaluation of the damage, repair, and design adequacy of the Diablo Canyon breakwater system occurring in January 1981, made available 10 records. Informed the requester that three records subject to this request are already available at the PDR.
Homi Minwalla, PARS Associates, (86-697)	In response to a request for records relating to NRC contract No. 03-85-055, made available one record.
Raymond J. Mayer (86-700)	In response to a request for records regarding the regulation of low-level radioactive material storage, made available one record. Informed the requester that nine records subject to this request are already available at the PDR.
Jeff Light, Syracuse Herald-Journal (86-716)	In response to a request for copies of all correspondence to and from Representative George Wortley for the years 1984 to the present, informed the requester that the NRC has no records subject to this request.

Denied

Robert Guild, Business and Professional People for the Public Interest (85-777)	In response to a request for records related to Inspection Report Nos. 50-456/85-21 and 50-457/85-22 regarding the Braidwood nuclear power plant, made available 16 records. Informed the requester that one record subject to this request is already available at the PDR. Denied three records in their entirety and portions of 47 records, disclosure of which would inhibit the exchange of information during the agency's deliberative process, would constitute an unwarranted invasion of personal privacy, disclose the identity of confidential sources, or interfere with an enforcement proceeding.

Denied, Cont'd

Charles Barnes (86-118)	In response to a request for copies of the entire docket files for dockets 40-7251, 40-7484, and 40-2038 and records dated from December 1, 1983, through March 31, 1984, for docket number 40-8760, made available 110 records. Informed the requester that additional records subject to this request are already available at the PDR. Denied one record in its entirety containing predecisional advice, opinions and recommendations of the staff. Denied portions of six records, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Stephanie Murphy, Nuclear Information and Resource Service (86-167)	In response to a request for records generated since FOIA-85-358 or records not addressed in NRC's response to FOIA-85-358 which contain (1) allegations made by a named individual regarding construction defects, improper procedures, poor quality assurance or other complaints against the Shearon Harris nuclear power plant and (2) instances or allegations of water leakage and other specified subjects regarding the Shearon Harris site, denied records maintained by the Office of Investigations in their entirety, disclosure of which would interfere with an ongoing enforcement proceeding.
Lynn Connor, Doc-Search Associates (86-367)	In response to a request for copies of (1) SECY-85-386 and (2) EQ Audit for the Clinton Power Station (EGG-EA-6829), made available a copy of item 2. Denied portions of item 1, release of which would tend to inhibit the open and frank exchange of ideas essential to the deliberative process and would constitute a clearly unwarranted invasion of personal privacy.
Ellyn R. Weiss, Rene Heilman, Union of Concerned Scientists (86-A-138-86-293)	In response to an APPEAL TO THE EDO for the release of 23 denied records regarding a request for three categories of records related to equipment qualification at TMI and the subjects discussed at a meeting held April 18, 1986, at the TMI site, made available three records. Continued to deny the remaining 20 records, release of which would adversely affect the agency's deliberative process.
Jennifer Puntenney, Safe Energy Coalition of Michigan (86-A-147-86-370)	In response to an APPEAL TO THE EDO for the release of 14 denied records in NRC's July 16, 1986 response regarding a request for records concerning the Fermi nuclear power plant, made available nine records. Denied five records in their entirety in order to preserve the free and candid internal dialogue necessary for the careful formulation of agency decisions.

Denied, Cont'd

Billie P. Garde, Government Accountability Project (86-A-155-85-490) (86-A-156-85-548)	In response to APPEALS TO THE COMMISSION for the release of 37 denied records and portions of one record regarding requests for records concerning the Farley nuclear power plant, made available 3 records. Denied 32 records in their entirety and portions of two records, release of which could allow those being investigated to learn the scope, direction, and focus of investigatory efforts, and thus could possibly allow them to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. Continued to deny portions of one record, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Billie P. Garde, Government Accountability Project (86-A-157-86-179)	In response to an APPEAL TO THE EDO for the release of one denied record regarding a request for records concerning the meeting between TUECO officials and the NRC staff regarding the investigations concerning illegal use of drugs at the Comanche Peak nuclear power plant, continued to deny this record in its entirety to preserve the free and candid internal dialogue necessary for the careful formulation of agency decisions.

WEEKLY INFORMATION REPORT
DIVISION OF CONTRACTS
WEEK ENDING OCTOBER 10, 1986

PROPOSALS UNDER EVALUATION

RFP No.: RS-NMS-87-002
Title: "Assessment of NMSS Financial Assurance Regulation Framework"
Description: The objective of this procurement is to assess NRC's Financial Assurance Program for NMSS licensees to determine the adequacy of the existing regulatory framework to assure that adequate financial assurance and sufficient coverage are in place and maintained at all times.
Period of Performance: 24 months
Sponsor: Office of Nuclear Material Safety and Safeguards
Status: Negotiations have been completed. Best and Final offers are due on October 16, 1986.

RFP No.: RS-ADM-87-169
Title: "Preparation and Delivery of NUREG-0750, Nuclear Regulatory Commission Issuances and Indexes"
Description: Contractor shall prepare NRC monthly issuances, quarterly and semiannual indexes for camera-ready copy in the form of a database computer tape.
Period of Performance: 24 months with a one-year option
Sponsor: Office of Administration
Status: Best and Final offers received and forwarded to Source Evaluation Panel for review on October 6, 1986.

OFFICE OF NUCLEAR REACTOR REGULATION

ITEMS OF INTEREST

Week Ending October 10, 1986

Diablo Canyon Nuclear Power Plant

On September 30, 1986 PG&E commenced unloading spent fuel from Unit 1 into the original racks, reinstalled into the Unit 1 pool. In the morning of October 1 a fuel assembly element in the reactor vessel tipped by approximately 2 feet, at the top, into the open space of 3 assemblies which already had been unloaded. The licensee stopped further refueling operations. The licensee informed us that no increase in airborne radio-activity had been measured and no fuel damage was apparent. (A similar incident had occurred at Beaver Valley).

On October 2, 1986, the tipped assembly was successfully transferred to the spent fuel pool. The operation was performed using special procedures and under strict administrative controls.

Oyster Creek Nuclear Generating Station

On October 1, 1986, GPU Nuclear (the licensee) issued a press release stating that Oyster Creek has become only the fourth unit in the United States to have ten specific training programs accredited by the National Nuclear Accrediting Board. The Accrediting Board is an independent group comprised of scholars and executives from utilities, post-secondary schools, non-nuclear training institutes and individuals nominated by the Nuclear Regulatory Commission. Its activities support the National Academy for Nuclear Training. The ten training programs accredited are: senior reactor operator, reactor operator, non-licensed operator, shift technical advisor, instrument and control technicians, electrical main-tenance, mechanical maintenance, chemistry technician, radiological protection technicians and technical training of technical staff and managers. With accreditation, Oyster Creek also becomes a training branch of the National Academy for Nuclear Training which is administered by the Institute of Nuclear Power Operations.

V. C. Summer

The plant shut down this morning, October 7, 1986, in accordance with technical specifications due to unknown reactor coolant system leakage just exceeding 1.0 gpm. An unusual event has been declared. The licensee is looking for the leakage source and the NRC staff is following their progress.

Catawba Unit 1

On October 7, 1986, with Unit 1 in Mode 6 (refueling), about 10,000-12,000 gallons of borated water from the RWST spilled through the detensioned reactor vessel head and the disconnected UHI piping. The cause is a procedural deficiency related to the alignment for a test of the "B" RHR pump. The spill has affected the area around the reactor vessel head (including the CRDMs) and portions of the lower containment. Lower containment contamination

level is about 400 mrad smearable. No airborne activity is detectable. No contamination of individuals has occurred.

This event will cause a delay of about 10-14 days to Duke Power Company's schedule for restart from the first refueling outage. NRR and Region II are following up.

Seabrook Station Unit 1

On August 22, 1986, Seabrook Station Public Service Company of New Hampshire, filed a motion pursuant to 10 CFR 50.57(c), requesting the Atomic Safety and Licensing Board (ASLB) to authorize the Director of Nuclear Reactor Regulation (NRR) to issue a license to load fuel and conduct certain precriticality testing of the Seabrook Station Unit 1.

On October 7, 1986, the ASLB granted Public Service Company's request and authorized the Director of NRR to issue a license for the requested operation, subject to his findings required under 10 CFR 50.57(a).

Public Service Company estimates being ready to load fuel on or about October 16, 1986.

We are in the final stages of preparing our Safety Evaluation Report and the license (with appropriate conditions reflecting the ASLB Order) on a schedule to support the applicant's date.

Region I can support the October 16 fuel load date and will have completed the review of all preoperational tests required to support the license to be issued. The Region will have completed the review of all the preoperational tests required to support low power testing prior to issuance of a low power license.

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS

Items of Interest

Week Ending October 10, 1986

Babcock & Wilcox Informal Hearing - Apollo, PA

The public hearing on the Volume Reduction Services Facility proposed by B&W for commercial incineration and compaction of low-level waste at its Parks Township site was held on September 30 through October 2 in Apollo, PA, by Administrative Judge Oscar H. Paris of the ASLBP. While the staff is not a party to this informal proceeding, members of FC and OGC were present to respond to questions by Judge Paris. Proposed findings are to be submitted by the applicant, B&W, to Judge Paris by October 23, 1986, and by the petitioners by October 30, 1986. Replies to the proposed findings are to be submitted one week later.

Erwin Tennessee Water Treatment Plant

The Tennessee Department of Health and Environment informed Region II of elevated readings of total uranium activity in a sewage sludge sample from the Erwin Tennessee Water Treatment Plant. State of Tennessee representatives reported values of 700 to 800 pCi/gm in sludge collected during August 1986. (This corresponds to about 0.12 percent of uranium which is licensable.) Gross alpha values from first quarter samples were reported as 300 pCi/gm. The State indicated that the range in sludge from other areas of the State was 10 to 30 pCi/gm. Region II and NMSS are reviewing the findings. The sludge will be reanalyzed to confirm the findings, this includes analysis of uranium isotopes and its daughter products to determine if enriched uranium is found in the sludge. Pending the findings, an appropriate agency course of action will be taken. NFS has been notified of these findings.

Communications on Nuclear Criticality Safety Issues

On Friday, October 3, 1986, Region II notified NMSS that they were informed by the Babcock & Wilcox Lynchburg Research Center (LRC) that the latter had discovered errors in a Table in the Nuclear Safety Guide, TID-7016, Revision 2, dealing with the criticality of uranium-carbon-water mixtures. Region II also notified personnel at other NRC Regional Offices of the errors. NMSS knew of no licensee that based the nuclear criticality safety of its operations on the subject table, but discussed the problems of the Table with the LRC, Regions IV and V, GA Technologies, Inc., and personnel of the Fort St. Vrain Power Station, and confirmed that no licensed facility used the table in their nuclear criticality analyses. The safety margins at all facilities met the licensed conditions.

Illinois Fee on Transportation of Spent Fuel

On September 3, 1986, DOE, a utility and utility group appealed to DOT's Research and Special Programs Administration (RSPA) a June 4, 1986 decision of the Office of Hazardous Materials Transportation (OHMT). The OHMT decision did not consider a State of Illinois fee of $1,000.00/shipment on spent fuel transportation inconsistent with the Hazardous Materials Transportation Act (HMTA) or Hazardous Materials Regulations. Several arguments were raised in the appeal, including assertions that OHMT failed to examine and attribute appropriate importance to the consequences of such a fee on shipments of spent fuel. On September 29, 1986, a public notice was issued (51 FR 34527) inviting the public to comment on whether the challenged transit fee is inconsistent with HMTA or the regulations issued. Comments will be considered before an administrative ruling is issued by the RSPA Administrator.

FBI Criminal History Rule

The proposed rule has been revised in response to CRGR suggestions and forwarded to the EDO for approval and transmittal to the Commission.

Access Authorization Policy Statement and Industry Guidelines

The Access Authorization Policy Statement and the Industry Guidelines have been modified based on discussions with NUMARC. The revised package is in review by cognizant offices for reaffirmation of previous concurrences. Subsequent to office concurrence, the package will be forwarded to the CRGR.

Office of Inspection and Enforcement
Items of Interest
Week Ending October 10, 1986

1. Items of Interest

a. Advance Medical Systems Inc.

An Order Suspending License and Order to Show Cause, effective immediately, was issued today to Advanced Medical Systems, Inc. In addition, Orders Modifying Licenses are being issued to six medical facilities. These actions are based on findings that since the spring of 1985 and as recently as September 1986, employees of Advanced Medical Systems, Inc. were directed to perform certain service and maintenance on teletherapy equipment at medical facilities notwithstanding their lack of NRC authorization, their lack of required training to perform the directed maintenance, their lack of appropriate radiation detection and monitoring equipment or required service manuals, and their express objections to performing such maintenance without proper training. In addition, one medical facility at which such service and maintenance was performed has indicated its belief that the licensee's employees were unqualified to perform the maintenance on its teletherapy equipment.

b. Civil Penalties Paid

(1) Florida Power and Light Company (Turkey Point) in the amount of $300,000 based on violations involving inadequate maintenance of the auxiliarly feed system and supporting backup nitrogen system. (EA 86-20)

(2) Duke Power Company (McGuire 1) in the amount of $50,000 based on a violation involving restart without satisfying a tech spec requirement. (EA 86-52)

2. The following Significant Enforcement Actions were taken during the past week:

1. IE Compliance Bulletin No. 86-03, Potential Failure of Multiple ECCS Pumps Due to Single Failure to Air-Operated Valve in Minimum Flow Recirculation Line was issued to all nuclear power reactors holding an operating license or a construction permit.

2. A Notice of Violation and Proposed Imposition of Civil Penalties was issued to the University of Utah in the amount of $3,000. This action is based on transportation, health physics, safeguards, and operation violations. (EN 86-74)

3. The following IE Preliminary Notifications were issued during the past week:

   a. PNO-I-86-72A, GPU Nuclear Corpoation (Oyster Creek) - Employee Controlled Substance Use (Update).

   b. PNO-I-86-81, GPU Nuclear (Oyster Creek), Alleged Improper Welder Qualification of Welders Involved in Nonsafety-Related Welds.

   c. PNO-II-86-70, Florida Steel (Tampa, FL), Radioactive Source Found in Scrap Metal.

   d. PNO-II-86-71, USDA-SCS (Fulton, MS), Stolen Troxler Moisture Gauge.

   e. PNO-II-86-72, USDA-CSC (Fulton, MS), Stolen Troxler Moisture Gauge Found.

   f. PNO-III-86-111, Detroit Edison Company (Fermi 2), Manual Reactor Scram (Shutdown).

   g. PNO-V-86-68, State of Oregon (Agreement State) - Radioactive Waste Drum on Oregon Beach.

   h. PNO-V-86-69, Sacramento Municipal Utility District (Rancho Seco) - Brief Loss of Decay Heat Removal at Rancho Seco.

   i. PNO-V-86-70, Pacific Gas and Electric Company (Diablo Canyon 1) - Inoperable Boration Flowpath During Refueling.

4. The following IE Information Notices and Bulletins were issued during the past week:

   1. IE Information Notice No. 86-85, Enforcement Action Against Medical Licensees for Willfull Failure to Report Misadministrations was issued to all NRC medical licensees.

   2. IE Information Notice 86-86, Clarification of Requirements for Fabrications and Export of Certain Previously Approved Type B Packages was issued to all registered users of NRC certified packages.

   3. IE Information Notice 86-87, Loss of Offsite Power Upon an Automatic Bus Transfer was issued to all nuclear power reactor facilities holding an operating license or a construction permit.

OFFICE OF NUCLEAR REGULATORY RESEARCH

Items of Interest

Week Ending October 10, 1986

Nuclear Plant Analyzer/Nuclear Plant Data Bank (NPA/NPDB)

The Nuclear Plant Analyzer (NPA) is being developed at INEL to provide simultaneous graphics displays and user interactive control of on-going computations. It has just been successfully demonstrated on the LANL CRAY-1 mainframe computer using the TRAC-PWR code. This now expands the NPA to include the 3- dimensional capability of the TRAC code as well as providing implementation of the NPA on an additional computer mainframe type. Use of the NPA on the CRAY-1 mainframe will expand use of the NPA to users requiring access to a high speed machine.

The Nuclear Plant Data Bank (NPDB) is under development at LANL to provide a source of plant design and operational data for the generation of computer models for the NPA. The software program used to generate Westinghouse 4-Loop PWR plant models for the TRAC code has been fully defined and programming is now in progress.

University of Maryland 2x4 B&W Simulation Loop

The purpose of the University of Maryland at College Park (UMCP) 2x4 Babcock and Wilcox (B&W) Simulation Loop is to perform integral effects tests on thermal hydraulics phenomena relevant to post small break loss-of-coolant (SBLOCA) transients in reactors of B&W design. The data will be used in conjunction with data from the larger-scale, full-pressure MIST facility to assess thermal hydraulic code capability. The UMCP 2x4 B&W loop is volume scaled to the proportion of 1:500 with a maximum power output of 200 kW and pressure of 300 pounds per square inch. Since it is a low pressure test facility, the data will be also be used to address implications and distortions inherent in scaled experiments.

In the month of September, 1986, tests were conducted to simulate the Boiler-Condenser Mode (BCM) during SBLOCA. The tests were started with single-phase natural circulation. The secondary water levels in the steam generators were maintained at a constant level. Then the break was initiated. When the top of the hot leg U-bend was voided, the natural circulation was interrupted. After interruption, the liquid was found to remain essentially stagnant except for periodic oscillations until the

primary side had lost so much inventory that the thermal center in the hot leg side dropped below that of the coolant level in the secondary sides of the steam generators. During the interrupted period, the heat transfer was very poor and the primary pressure rose steadily. The vapor was removed either in a "burping" mode, if the hot leg nozzle was submerged, or in continuous flow if the nozzle was exposed. Once the thermal center in the hot leg dropped below the secondary side coolant level, two-phase natural circulation set-in and efficient cooling was again achieved. Several runs with power-control or pressure-control were conducted and essentially the same physical phenomena were observed. The preliminary conclusion from the tests is that during a SBLOCA, there is a range of primary coolant level (below the top of the hot leg U-bend and above the secondary-side coolant level) in which the primary to secondary heat transfer is poor. In such situations, if the reactor operator were instructed to allow the primary inventory to drop below that of the secondary side coolant level, efficient heat transfer could resume. Because of the small scale of the facility and differences in piping configurations, considerable analysis will have to be performed before these preliminary conclusions could be applied to a full scale nuclear plant.

Multi-Loop Integral System Test (MIST) Program

The MIST facility is an integral test facility designed to simulate thermal hydraulic aspects of transients in reactors of B&W design. The data will be used in assessing thermal-hydraulic code capability. MIST has already completed transient testing ranging from tests that were set up to study the effects of variation of boundary conditions on the initial post-SBLOCA transient interactions to tests that examined Feed and Bleed capability, and system response after a Steam Generator Tube Rupture. Currently, testing on the effects of venting and non-condensible gases on SBLOCA behavior is on-going. After the venting and non-condensible gas tests, the loop will be shutdown for modification in order to perform simulated Davis Besse continuous vent line tests for Toledo Edison Company. These tests are scheduled to be completed in mid November, 1986. After the Davis Besse continuous vent line tests, the loop will be reconfigured to conduct tests on the effects of reactor coolant pump operation on SBLOCA. All currently planned testing will be completed by January, 1987.

Symposium on "Seismic and Geologic Siting Criteria for Nuclear Power Plants

A symposium on "Seismic and Geologic Siting Criteria for Nuclear Power Plants," Appendix A to 10 CFR Part 100, was held on October 7, 8, and 9, 1986. The meeting was held for the purpose of identifying issues in the application of Appendix A for the developing of an expanded basis for the anticipated revision of the regulation. There was broad representation from the Utility industry, EPRI, AIF, consultants, A&E firms, constructors, and other Federal agencies; e.g., USGS, DOE, NBS, and National Academy of Sciences. A complete transcript was made of the proceedings and will be available in about 10 days. Opening remarks which set the tone of the meeting were made by Mr. Eric Beckjord, Director, Office of Nuclear Regulatory Research, and Mr. Richard Vollmer, Deputy Director, Office of Nuclear Reactor Regulation. Approximately 200 persons comprising staff speakers and interested parties attended. Dr. Ross, Deputy Director, Office of Nuclear Regulatory Research, provided the closing remarks.

Recently Issued Publication

Proposed Rev. 1 to Regulatory Guide 3.50, "Guidance on Preparing a License Application to Store Spent Fuel and High-Level Radioactive Waste", Task CE 402-4. Comments requested by December 1, 1986. Contact: W. R. Pearson (301) 443-7682

ITEMS OF INTEREST
OFFICE OF INTERNATIONAL PROGRAMS
WEEK ENDING OCTOBER 10, 1986

Foreign Visitors

On Monday, Tuesday, and Wednesday the NRC staff met with representatives of the Japanese Agency of Natural Resources and Energy (ANRE) for discussion of a wide range of regulatory and other technical issues. The nine-member Japanese delegation was headed by Mr. Kunikazu Aisaka, Deputy Director General of ANRE, and their visit marked the third regular meeting between the NRC and the Japanese regulatory contact. Members of the Japanese team toured the TMI and Diablo Canyon facilities on Thursday and Friday, following the formal sessions.

On Tuesday a delegation of Taiwanese officials representing the Atomic Energy Council of Taiwan and Taipower (a utility) visited NMSS to discuss waste management issues. Taiwan has a low-level waste storage site in operation which it is planning to enlarge to accommodate the nuclear waste generated by its various facilities.

OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION AND CIVIL RIGHTS

Item Of Interest

Week Ending October 10, 1986

Small and Disadvantaged Business Program

In support of the President's proclamation designating the week of October 5 through 11, 1986, as Minority Enterprise Development (MED) Week, a commemorative program took place at the Hyatt Regency Hotel on Capitol Hill. Featured speakers included Secretary of Commerce Malcolm Baldridge, Secretary of Transportation, Elizabeth Dole, Acting Administrator for the Small Business Administration, Charles L. Heatherly, and the Director, Minority Business Development Agency, James Richardson Gonzales. The U.S. Nuclear Regulatory Commission participated in the procurement marketplace. About 25 small and disadvantaged business firms picked up NRC literature and discussed their expertise and the opportunity to do business with NRC in the future. The major Federal agency corporate awards were presented at the White House on October 8, 1986.

OFFICE OF EXECUTIVE DIRECTOR FOR OPERATIONS

WEEK ENDING OCTOBER 10, 1986

Proposed Rule Signed By EDO

On October 6, , 1986, the Executive Director for Operations approved a proposed rule that would amend 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," and 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material," by adding the requirement to report the results of physical inventories in §70.53(b) and §74.17. This action codifies the previously voluntary submittal of such reports by fuel facility licensees.

This constitutes notice to the Commission that, in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this proposed rule for publication in the Federal Register.

ITEMS ADDRESSED BY THE COMMISSION - WEEK ENDING OCTOBER 10, 1986

A. STAFF REQUIREMENTS - BRIEFING ON ADVANCED REACTOR DESIGNS, 10:00 A.M., THURSDAY, OCTOBER 9, 1986, COMMISSIONERS' CONFERENCE ROOM, D.C. OFFICE (OPEN TO PUBLIC ATTENDANCE) - Memo SECY to V. Stello dated 10/9/86

The Commission* was briefed by DOE and industry on advanced reactor designs being developed under DOE sponsorship.

The following persons participated in this meeting:

Dr. A. David Rossin, Department of Energy

SAFR Design
John S. McDonald, Rockwell International
Robert T. Lancet, Rockwell International
Charles L. Storrs, Combustion Engineering

PRISM Design
J.S. Armijo, General Electric
Glenn Sherwood, General Electric

HTGR Design
T.E. Northrup, GA Technologies
Warren Chernock, Combustion Engineering
Daniel Mears, Gas Cooled Reactor Associates

The Commission requested the staff to prepare a paper that identifies policy issues associated with its review of advanced reactors and outlines the approach and schedules to be used to review the advanced reactor designs.

The Commission will schedule a future briefing for the staff to present its recommendations and proposals for reviewing the advanced reactor designs. The Commission will request that DOE and the industry make themselves available at the meeting to answer questions from the Commission.

* Commissioner Carr was not present.

B. STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION AND VOTE, 3:30 P.M., THURSDAY, OCTOBER 2, 1986, COMMISSIONERS' CONFERENCE ROOM, D.C. OFFICE (OPEN TO PUBLIC ATTENDANCE) - Memo SECY to W. Parler dated 10/10/86

I. SECY-86-268 - Withdrawal of Proposed Rule Regarding Consideration of Earthquakes in Emergency Planning

The Commission by a 5-0 vote,* approved a Federal Register Notice which withdraws the Commission's proposed rule amending 10 CFR Part 50, Appendix E and sets forth the Commission's explanation for its decision.

Commissioner Bernthal provided the attached modifications to his separate opinions to be included in the Federal Register Notice.

Commissioner Bernthal's revised separate views should be incorporated into the FRN, the FRN should be reviewed by Rules and Records for conformance with the requirements of the Federal Register, and forwarded for signature and publication.

II. SECY-86-271 - Options for Response to Presiding Officer's Recommendation that Formal Hearings be Convened for Sequoyah Fuels Corporation UF6 to UF4 Conversion Facility

The Commission by a 3-2 vote,** approved an order in response to a memorandum dated July 3, 1986 from Judge Frye the presiding officer for the Sequoyah Fuels informal adjudicatory proceeding. The memorandum suggested that the Commission convert the hearing into a formal, trial-type adjudication under the procedures set forth in 10 CFR Part 2, Subpart G. In the order the Commission declines again to exercise its discretion to apply its procedures governing formal adjudication to this particular licensing proceeding.

---

* Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Chairman Zech was not present when this item was affirmed. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision. Chairman Zech, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote.

** Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Chairman Zech was not present when this item was affirmed. In order to allow the will of the majority to prevail, Commissioner Asselstine did not participate in the formal vote on this paper. Accordingly, the formal vote of the Commission was 2-1 in favor of the decision. Chairman Zech, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote. Commissioner Asselstine had indicated his disapproval and had he participated he would have disapproved.

Commissioner Asselstine disapproved the order, and would have applied formal adjudication procedures to the hearing. Commissioner Bernthal approved in part and disapproved in part; he would have asked the intervenors to demonstrate that there are genuine issues of material fact regarding the relationship of the January 4 accident to the proposed conversion facility. If they met that threshold he would have convened a formal hearing.

OCTOBER 10, 1986

NRR MEETING NOTICES*

OCTOBER 10, 1986

DATE/TIME	DOCKET NUMBER	LOCATION	PURPOSE	APPLICANT/ ATTENDEES	NRR CONTACT
9/17-10/15/86	50-456 50-457	Phillips Building	Determine what staff requirements remain to be met to resolve Braidwood licensing issues	NRC Staff/CECO	J. A. Stevens
10/14/86 1:00 p.m.	50-390 50-391	TVA Conference Room Bethesda, Maryland	Discuss TVA's proposal to remove the RTD bypass system at Watts Bar and replace it with the Eagle 21 detector	NRC/TVA	T. J. Kenyon
10/14-17/86 8:00 a.m.	50-424 50-425	Room TBA Phillips Building	Discuss Vogtle Proof and Review copy of the Tech. Spec. before the final draft version	NRC/Bechtel Power Company/Westinghouse/ Georgia Power Co.	J. W. Thompson
10/15/86 10:00 a.m.	50-325 50-324	Room P-822A Phillips Building	Discuss the fire barrier penetration seal program	NRC/CP&L	E. Sylvester
10/15/86 10:00 a.m.	-	Room P-422 Phillips Building	Quarterly Meeting of the ALWR Utility Steering Committee and the NRC Policy Committee to Assess Progress and provide guidance for the EPRI Advanced LWR Program	NRR Staff/EPRI	D. H. Moran

* Copies of summaries of these meetings will be made publicly available and placed in the respective docket file(s) in the NRC and local public document rooms

A summary of these meeting notices can be obtained by calling 492-7424

ENCLOSURE P

OCTOBER 10, 1986

NRR MEETING NOTICES*

OCTOBER 10, 1986

DATE/TIME	DOCKET NUMBER	LOCATION	PURPOSE	APPLICANT/ ATTENDEES	NRR CONTACT
10/15-16/86 9:00 a.m.	50-498 50-499	Room 1309 Landow Building	Discuss new information pursuant to a meeting on October 1, 1986 and discuss referenced tests and proposed future tests to meet the criteria in the Regulatory Guide	NRC/HL&P	N. P. Kadambi
10/15-17/86 8:00 a.m. 10/16-17/86	50-443	Seabrook Station Trg. Center Seabrook, NH and Brookhaven National Laboratory/Upton, NY	Discuss several topics involved in the staff's review of the Seabrook Risk Management and Emergency Planning Study	Members of the public	V. S. Noonan
10/16/86 8:00 a.m.	50-424 50-425	Room 445 Phillips Building	Revise the negative pressure specification pertaining to electrical penetrations with the ESF/HVAC system	NRC/Bechtel/Georgia Power Company/ Southern Company Services	J. W. Thompson
10/16/86 2:30 p.m.	50-424 50-425	Room TBA Phillips Building	Review the additional information requested by the staff on physical independence of electrical systems at Vogtle	NRC/Bechtel/Georgia Power Company/ Southern Company Services	J. Thompson
10/16-17/86 8:30 a.m.	50-263/ 254/265/ 219/237/	Room P-118 Phillips Building	Round table discussion of issues affecting BWD1 operating reactors and the NRC	NRC/Utilities	J. A. Zwolinski

* Copies of summaries of these meetings will be made publicly available and placed in the respective docket file(s) in the NRC and local public document rooms

A summary of these meeting notices can be obtained by calling 492-7424

ENCLOSURE P

NRR MEETING NOTICES*

OCTOBER 10, 1986

DATE/TIME	DOCKET NUMBER	LOCATION	PURPOSE	APPLICANT/ ATTENDEES	NRR CONTACT
10/20-24/86 8:00 a.m.	50-424 50-425	Room TBA Phillips Building	Discuss the Vogtle Proof and Review copy of the Technical Specifications (TS) before the final draft version of the TS is issued	NRC/Bechtel/ Westinghouse/ Georgia Power Co.	J. W. Thompson
10/21-24/86 8:00 a.m.	50-275 50-323	PG&E Offices, 17th Floor Conference 77 Beale St. San Francisco, CA	Review status of Long Term Seismic Program, including discussion of of geological features, characterization of Hosgri Fault Zone and San Luis/Pismo Region; etc.	NRC/PG&E/Others	H. Schierling
10/22/86 9:00 a.m.	50-309	Room P-412 Phillips Building	Discuss the axial power shape used in Maine Yankee Large Break LOCA Analysis	NRC/Maine Yankee	P. M. Sears
10/22/86 9:00 a.m.	50-416/ 417/440 50-458/ 459/461	Room P-118 Phillips Building	Discuss (1) methods used to calculate heat transfer to equipment during hydrogen combustion and (2) hydrogen release history assumptions which serve as a basis for emergency procedure guidelines	NRC/HCOG	L. L. Kintner
10/23/86 9:00 a.m.	50-245	Room P-114 Phillips Building	Discuss Two Additional Appendix R Exemptions Concerning Drywell Polyurethane Foam and Instrument Racks	NRC/NNECO	J. J. Shea

* Copies of summaries of these meetings will be made publicly available and placed in the respective docket file(s) in the NRC and local public document rooms

A summary of these meeting notices can be obtained by calling 492-7424

OCTOBER 10, 1986

NRR MEETING NOTICES*

OCTOBER 10, 1986

DATE/TIME	DOCKET NUMBER	LOCATION	PURPOSE	APPLICANT/ ATTENDEES	NRR CONTACT
10/23/86 9:30 a.m.	50-313	Room P-110 Phillips Building	Licensee will present findings of recent RCP shaft inspections on ANO-1	NRC/Licensee	G. S. Vissing

ENCLOSURE P

* Copies of summaries of these meetings will be made publicly available and placed in the respective docket file(s) in the NRC and local public document rooms

A summary of these meeting notices can be obtained by calling 492-7424

OCTOBER 10, 1986

NMSS MEETING NOTICES

Division of Fuel Cycle and Material Safety

FOR WEEK ENDING: 10/10/86

DATE/TIME	DOCKET NUMBER	LOCATION	PURPOSE	ATTENDEES/ APPLICANT	NRC CONTACT
10/15/86 9:00 am	70-364 70-135	Willste Bldg. Silver Spring	Discuss consolidation of licenses with Babcock and Wilcox.	L. C. Rouse, FC W. T. Crow, FC P. Loysen, FC G. Bidinger, FC D. Culberson, B&W S. Sgarlata, B&W	Loysen
10/17/86 9-11:00 am		Naval Hospital Bethesda, MD	Present lecture on NRC's current policies and procedures in medical licensing.	P. Vacca, FC Participants in the Medical Officers' Course in Nuclear Medicine/Radioisotope Techniques	Vacca
10/17/86 9:30-12:30 pm		Willste Bldg. Silver Spring	Discuss development of mixed oxide fuel rod package.	C. E. MacDonald, FC C. R. Chappell, FC K. Goldman, et al, Transnuclear	MacDonald
10/21/86 9:30-1:00 pm	71-9202	Willste Bldg. Silver Spring	Discuss impact limiter tests.	R. H. Odegaarden, FC Representatives of DOE, EG&G, and Transnuclear	Odegaarden
10/21/86 10-12:00 Noon		Aberdeen Proving Grounds, MD.	Present information on NRC Licensing and Revision of 10 CFR Part 35.	P. Vacca, FC N. McElroy, FC Participants in the Army's "AMEDD Physics in Military Medicine Course"	Vacca

ENCLOSURE P

OCTOBER 10, 1986

ENCLOSURE P

NMSS MEETING NOTICE

Division of Waste Management

Date	Location	Purpose	Attendees	Contact
10/28-29	Austin, TX	Meeting with Afton Associates to Discuss Low-Level Radioactive Waste Policy Amendments Act	RMacDougall MKnapp SBahadur	MKnapp

Division of Safeguards

None

October 10, 1986

RII MEETING NOTICE

DATE/TIME	DOCKET NUMBER	LOCATION	PURPOSE	ATTENDEES/ APPLICANT	NRC CONTACT
10/14/86 3:00 pm		RII Office	Meeting with Georgia Power Company management to discuss improvements at Plant Hatch	J. O'Reilly, T. Beckham and Regional Administrator	Grace
			McGuire Emergency Drill	Selected RII Staff Members	Stohr
10/17/86		Arlington, TX	Meeting with RIV Regional Administrator to discuss Regional issues	R. Martin and Regional Administrator	Grace
10/21/86		Dothan, AL	Alabama Power Company - (Farley) SALP Meeting	Licensee, Deputy Regional Administrator, and selected RII Staff members	Ernst

OCTOBER 10, 1986

ENCLOSURE P

W 2040

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

20 - 24 OCTOBER 1986 W-2040

CASES SUMMARIZED

Adco Metals, Inc.	New Castle, Del.	1
Cassis Management Corp.	Freeport, N.Y.	2
Central Soya Co., Inc.	Abilene, Kan.	4
Challenge-Cook Bros. of Ohio, Inc.	Bryan, O.	4
James Troutman & Associates	Burbank, Calif.	1
M.J. Santulli Mail Services, Inc.	New York, N.Y.	1
Meyer's Cafe & Konditorei	Bellingham, Wash.	3
Premier Maintenance, Inc.	Milford, Conn.	3

NEWARK PUBLIC LIBRARY
NOV 1 0 1986
U. S. G... DOCS.
DEPOSITORY 375

OTHER CONTENTS

List of Decisions of Administrative Law Judges 5

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

LR1.15/2:

Adco Metals, Inc. (4--CA--15410; 281 NLRB No. 172) New Castle, Del. 17 October. The Board ruled that the employer violated the Act by distributing to employees a written statement from the company president indicating that workers who sign union authorization cards can expect to be subpoenaed.

Members Johansen and Babson stated that they "do not hold here that the precise words used by the Respondent in this case would establish a violation under all circumstances" nor do they hold that "the violation depends on the truth or falsity of the Respondent's statement."

"The violation stems from what this Board, in its cumulative experience, views as the plain coerciveness of an employer's statement that cardsigners not only will be identified, but will be forced to testify in a Federal proceeding whether they may wish to or not---and all of this in the absence of any issues which is or is likely to be litigated concerning the signing of union authorization cards," Members Johansen and Babson wrote.

Chairman Dotson concurred in the result "only on the basis that, in the context of the stipulated facts, the statement that employees 'can expect to be subpoenaed as a witness in a federal proceeding' can reasonably be construed as a statement of an intention on the part of the Employer to involve employees in the inconvenience of 'a federal proceeding' without lawful and proper cause as retaliation for signing a card."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Iron Workers Local 502; complaint alleged violation of Act's Section 8(a)(1). Case transferred directly to Board.

* * *

James Troutman & Associates (31--CA--15828; 281 NLRB No. 168) Burbank, Calif. 17 October. Absent good cause being shown for the employer failure to file a timely answer to the complaint, the Board granted summary judgment and found unlawful the employer refusal to furnish Theatrical Stage Employees Local 776 relevant bargaining information that included the names, job duties and rates of pay of bargaining unit employees.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Stage Employees IATSE; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 18 August 1986.

* * *

M.J. Santulli Mail Services, Inc. (2--CA--20588, et al.; 281 NLRB No. 170) New York, N.Y. 17 October. The Board decided in agreement with an administrative law judge that the employer illegally refused since June 1984 to meet and bargain with Paperworkers Local 318 and unilaterally ceased its payments to the union health and welfare trust fund in violation of the Act.

Chairman Dotson would dismiss the trust fund payments allegation because the unfair labor practice charge was filed more than six months after the employer ceased making fund payments.

On a matter other than case merits, the Board expressed its "strong disapproval" of the conduct of the counsel for the employer who denied knowledge or information sufficient to form a belief concerning the truth or falsity of the allegation that the union is a labor organization within the meaning of Section 2(5) of the Act, and it cautioned counsel against similar conduct in the future.

The Board stated "that counsel for Respondent appears to have acted contrary to the strictures of Sec. 102.21 of the Board's Rules and Regulations." That Section states that an attorney may be subject to disciplinary action where he has willfully violated the rule that statements contained in an answer to the complaint to be made in good faith and not be interposed as an attempt to delay case proceedings.

The employer counsel had attempted to elicit testimony on the union's ownership of property, a matter wholly unrelated to labor organization status; asked purely speculative questions; and requested production of documents which could have been subpoenaed months before the hearing. Also, the union has represented company drivers for 15 years.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Paperworkers Local 318; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at New York on 8 May 1985. Adm. Law Judge Joel P. Biblowitz's decision issued 20 August 1985.

* * *

Cassis Management Corp. (29--CA--12166; 281 NLRB No. 174) Freeport, N.Y. 17 October. Sustaining the findings of an administrative law judge, the Board concluded that the employer discriminatorily terminated its building maintenance superintendent at the Diplomat apartment building in order to discourage support for Service Employees Local 32B-32J.

The General Counsel established a prima facie case of discrimination by showing that Luis Arias had signed a union card and that the employer had inquired as to his union activities before discharging him without warning and without any reason being given at the time.

The company president at the trial testified that Arias was discharged because occupants of the apartment building complained that Arias's wife was operating a sewing business in the apartment and because Arias was moonlighting. Rejecting those reasons, the judge noted that the employer itself had used the sewing services of Arias's wife and that the matter of the sewing business had last been discussed with Arais three months earlier. He also noted that complaints that Arais's moonlighting interfered with his building superintendent duties were not corroborated by the tenants' spokesman.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Brooklyn on 31 March 1986. Adm. Law Judge James F. Morton's decision issued 3 July 1986.

* * *

Premier Maintenance, Inc. (39-CA-743, 767, 791; 39-RC-206, 207, 227; 282 NLRB No. 3) Milford, Conn. 23 October. The Board held that the employer engaged in numerous unfair labor practices in connection with a 1981 organizing effort of Service Employees Local 32-E at several facilities where the employer performed cleaning services.

The employer was ordered to cease (a) coercively interrogating employees concerning their union activities; (b) promising benefits to employees should they reject the union; (c) deferring wage increases because of their support for the union; (d) threatening reprisal if they select the union; (e) granting increased wages and benefits in order to induce employees to reject the union; (f) promulgating and maintaining a rule against solicitation which is discriminatory; and (g) discharging employees, transferring employees, or otherwise discriminating against employees because of their union activities.

In partial dissent, Chairman Dotson would find that the General Counsel failed to prove two instances of illegal interrogation, and failed to establish that the employer unlawfully threatened to install a timeclock in the event of a union victory. He also would find, with regard to the grant of wage increases and other benefits, a violation only insofar as the employer announced the increased benefits shortly before a representation election.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Service Employees Local 32-E; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Stratford on 12, 13, and 15 July 1982. Adm. Law Judge Julius Cohn's decision issued 28 April 1983.

* * *

Meyer's Cafe & Konditorei (19-CA-17126, 17283; 282 NLRB No. 1) Bellingham, Wash. 22 October. The Board affirmed an administrative law judge's decision that the employer violated the Act by recognizing Hotel and Restaurant Employees Local 451 as bargaining agent at its newly opened Konditorei delicatessen in Bellingham and by executing a labor agreement covering Konditorei employees at a time when Local 451 did not represent an uncoerced majority.

Additionally, the Board concluded that the employer's refusal to apply terms of its contract with the charging party -- Food and Commercial Workers Local 44 -- to the Konditorei employees constituted a bargaining violation.

The Board disagreed with the employer contention that it was not obligated to extend to the new hires at Konditorei the current contract with Local 44 covering Meyer's Cafe employees in Bellingham. The Board found the Konditorei operation was nothing more than an expansion or enlargement of the existing restaurant operation, which required the hiring of new employees to staff the facility.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Food and Commercial Workers Local 44; complaint alleged violation of Act's Section 8(a)(1), (2), (3) and (5). Hearing at Bellingham on 11 and 12 June 1985. Adm. Law Judge James S. Jenson's decision issued 10 February 1986.

* * *

Central Soya Company, Inc. (17--CA--10007; 281 NLRB No. 173) Abilene, Kan. 21 October. The Board by 3-1 vote held that the employer violated the Act by withdrawing recognition from the Grain Millers and refusing to apply an existing collective-bargaining agreement to a newly-acquired South Washington Street feed mill.

Members Johansen, Babson and Stephens concluded that the union was entitled to continued recognition following the employer's closing of its feed mill on First Street and consolidation and relocation at the new S. Washington Street facility. The majority relied on the lack of substantial change in operations as well as the maintenance of majority status by the union.

In dissent, Chairman Dotson commented that the majority "has created a presumption that when a represented group is merged with an unrepresented group, representation will extend to the newly created unit." That presumption, the Chairman added, "is contrary to the neutrality mandated by the Act concerning questions of representation." In his view, the majority erred in applying the accretion doctrine expansively and accreting a "group of historically unrepresented employees to an approximately equal size group of represented employees."

The majority however concluded that "the Respondent should not be allowed to capitalize on the relocation to S. Washington Street to justify terminating its long-term bargaining relationship with the majority representative. As the previously unrepresented employees share such an overwhelming community of interest with the previously represented employees, we are constrained to find a valid accretion which perpetuated the Respondent's obligation to bargain with the Union at S. Washington Street."

(Chairman Dotson and Members Johansen, Babson and Stephens participated.)

Charges filed by Grain Millers; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Abilene on 25 June 1981. Adm. Law Judge Russell L. Stevens' decision issued 7 August 1981.

* * *

Challenge-Cook Brothers of Ohio, Inc. (8-CA-15391, 16250; 282 NLRB No. 2) Bryan, O. 24 October. The Board held that the employer did not violate the Act by denying pension withdrawal benefits to employees during a prescheduled 2-week shutdown period which was overlapped by a lockout.

The 2-week planned layoff was canceled when the employer initiated a lockout to further its bargaining position, after reaching an impasse in contract

negotiations with the Steelworkers. The lockout extended well beyond the period of prescheduled layoff.

The Board decision reversed an administrative law judge who concluded that the employer had deliberately scheduled the lockout to overlap with the layoff so as to deprive employees of benefits they would have received during the 2-week period.

In disagreement, the Board concluded that the timing of the lockout--- initiated on the first day after the union rejected the company's latest contract proposal--- rasied the inference that its purpose was to place economic pressure on the union and not to overlap with a prescheduled layoff.

Regarding other issues, the Board found that the employer violated the Act by refusing to bargain with the union about the effects of its decision to relocate its cement mixer operations from Bryan, Ohio to Calhoun, Georgia, and by refusing to furnish the union requested information relevant to such bargaining.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Steelworkers; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Bryan on 19 July 1983. Adm. Law Judge Arline Pacht's decision issued 2 February 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Teamsters Local 216 (Calcon Construction Co.), South San Francisco, Calif. 9 October. 20--CC--2943; JD(SF)--129--86, Timothy D. Nelson, Adm. Law Judge

California Portland Cement Division, Calmat Co. (Cement Workers Local D89), Colton, Calif. 3 October. 31--CA--15662; JD(SF)--125--86, Jay R. Pollack, Adm. Law Judge

Amalgamated Transit Local Union 1222 (Greyhound Lines, Inc.) (Individual), Los Angeles, Calif. 7 October. 21--CB--9518; JD(SF)--128--86, Roger B. Holmes, Adm. Law Judge

Upstate Coca Cola, Inc. (Teamsters Local 669 and Individual), Albany, N.Y. 21 October. 3-CA-13133, 3-CB-4858; JD(NY)--94--86, Raymond P. Green, Adm. Law Judge

Charles Schaefer Sons, Inc. (Teamsters Local 462), Union, N.J. 21 October. 22-CA-14408; JD(NY)--96--86, Joel P. Biblowitz, Adm. Law Judge

Trident Express, Inc. Woven Express Co., Inc. (Longshoremen's Local 1964), North Bergen, N.J. 21 October. 22-CA-14201; JD(NY)--98--86, Steven Davis, Adm. Law Judge

King Louie International (Individual), Vinita, Okla. 21 October. 16-CA-12557; JD(ATL)--68--86, Richard J. Linton, Adm. Law Judge

Walter Kidde, Division of Kidde, Inc. (Individuals), Graham, N.C. 15 October. 11--CA--11970, et al.; JD--274--86, Joel A. Harmatz, Adm. Law Judge

Miami Valley Carpenters District Council of Dayton, Ohio (Concourse Construction Co.), Dayton, O. 24 October. 9--CB--6484; JD--276--86, Robert T. Wallace, Adm. Law Judge

Association Hospital Del Maestro, Inc. (Individual), San Juan, P.R. 27 October. 24--CA--5245, 5276; JD--278--86, Robert W. Leiner, Adm. Law Judge

Rose Printing Co., Inc. (Graphic Communications Local 241-B), Tallahassee, Fla. 24 October. 12-CA-11819, et al.; JD(ATL)--59--86, Hutton S. Brandon, Adm. Law Judge

Valley Mould Division, Microdot, Inc. (Professional Employees Local 17), Hubbard, O. 27 October. 8--CA--18991; JD--281--86, Donald R. Holley, Adm. Law Judge

Frank Chervan, Inc. (Clothing and Textile Workers), Beford, Va. 27 October. 5-CA-17608; JD--277--86, Claude R. Wolfe, Adm. Law Judge

Krasdale Foods, Inc. and Gil Torres Trucking Co., Inc. and Teamsters Local 138 (Individuals), Bronx, N.Y. 24 October. 2-CA-20875, 2-CB-10838, 2-CB-10868; JD(NY)--97--86, Steven B. Fish, Adm. Law Judge

Lynn's Trucking Co. (Teamsters Local 639), Landover, Md. 24 Ocotber. 5--CA--17791; JD--280--86, Arline Pacht, Adm. Law Judge

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2041

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

27 - 31 OCTOBER 1986 W-2041

NEWARK PUBLIC LIBRARY
NOV 1 9 1986
U. S. GOVT. PUBS.
DEPOSITORY 326

CASES SUMMARIZED

Lynn-Edwards Corp.	North Highlands, Calif.	2
Mercy Memorial Hospital Corp.	Monroe, Mich.	1
Princeton Holiday Inn	Princeton, W.Va.	1
S.M.S. Automotive Products, Inc.; Service Employees Local 252; and Electrical Workers (UE)	Philadelphia, Penna.	2
Teamsters Local 115	Philadelphia, Penna.	3

OTHER CONTENTS

List of Decisions of Administrative Law Judges 4

List of Directions of Elections by Regional Directors 5

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

LR 1.15/2:

Princeton Holiday Inn (9-CA-22725; 282 NLRB No. 4) Princeton, W.Va. 27 October. The Board affirmed an administrative law judge's decision that the employer violated the Act by withdrawing recognition from Food and Commercial Workers Local 278 before expiration of the certification year, and by refusing to execute an agreement reached with the union during that period.

The union was certified by the Board on 31 December 1984. After a number of fruitless bargaining sessions with the employer, the union went on strike. On 20 December 1985, the parties reached an agreement and arranged for the union to write the final contract. On 26 December 1985 the nonstrikers filed a decertification petition with the Board's regional office. Upon receipt of the final draft of the contract, the employer refused to sign pending disposition of the decertification petition by the regional office.

In finding the employer conduct violated the Act, the judge stated that "there is a conclusive presumption of continued majority status in a union during a full one year period following Board certification" and "that a union's loss of support during the 12-month period is not sufficient grounds for a refusal to bargain before the expiration of the 12-month period."

The Board found unnecessary the visitorial clause provision and board cease-and-desist order provided by the judge.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Food and Commercial Workers Local 278; complaint alleged violation of Act's Section 8(a)(5). Hearing at Princeton on 9 April 1986. Adm. Law Judge Thomas A. Ricci's decision issued 23 June 1986.

* * *

Mercy-Memorial Hospital Corp. (7-CA-25882; 282 NLRB No. 5) Monroe, Mich. 27 October. Members Johansen and Babson held that the employer illegally refused to bargain with Service Employees Local 79 after the union was certified as bargaining agent of such employees as dietary aides, dietary clerks, cook/bakers, and housekeeping aides.

The finding of violation was made on motion for summary judgment, the Board concluding that the employer had not raised any issue properly litigable in this unfair labor practice proceeding.

The employer denied that the union certification was valid on the ground that the Board erred in overruling an employer election objection in the underlying representation case. The Board here denied the employer request for reconsideration of the representation case decision.

Chairman Dotson, dissenting, would deny the motion for summary judgment for the reasons set forth in his dissent in the earlier election case, where he would have set aside the election based on an employer objection rather than certify the union, as reported at 279 NLRB No. 56.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Service Employees Local 79; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 14 July 1986.

* * *

S.M.S. Automotive Products, Inc.; Service Employees Local 252; and Electrical Workers (UE) (4-CA-10919, et al.; 4-CB-3977, et al.; 282 NLRB No. 6) Philadelphia, Penna. 28 October. The Board affirmed an administrative law judge's decision that the employer violated the Act by executing a new collective-bargaining agreement in 1979 with incumbent Service Employees Local 252 at a time when SEIU did not represent a majority of unit employees; and by polling the unit employees as to their union preference and afterwards recognizing Electrical Workers (UE) in 1980.

The judge found that execution of the agreement with SEIU was a violation because, before signing the agreement, both parties had been presented with an employee petition that revealed a majority of employees no longer wanted SEIU to represent them. Of approximately 150 unit employees, 110 signed the petition. The judge found that the petition constituted valid evidence that SEIU had lost its majority status.

In adopting the judge's finding that the employer violated the Act by unlawfully sponsoring and conducting a poll of its employees, the Board relied on his finding that the employer had no legitimate reason for taking the poll in light of a representation petition filed by the Teamsters. Because the poll was unlawful, it was invalid as a means of establishing majority status, the Board said. Consequently, the Board reasoned, the results of the poll could not be relied on by the employer to grant recognition to any of the participating unions, and its recognition of the UE on the basis of the poll was thus illegal.

The Board also adopted the judge's alternative rationale that the employer was not free to recognize the UE, both because of the pendency of a valid petition from a rival union and because of a continuing claim from an incumbent union.

Regarding union violations, the Board affirmed the judge's findings that SEIU and UE violated the Act through their conduct in executing the collective-bargaining agreement and accepting the employer's recognition, respectively.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individuals and Teamsters Local 169; complaint alleged violation of Act's 8(a)(1), (2) and (3); and 8(b)(1)(A) and (2). Hearing at Philadelphia on 15-18 September 1980. Adm. Law Judge Norman Zankel's decision issued 15 October 1980.

* * *

Lynn-Edwards Corp. (20-CA-18133, 20-RC-15616; 282 NLRB No. 7) North Highlands, Calif. 29 October. The Board affirmed an administrative law judge's decision that

the employer violated the Act by maintaining in its employee stock ownership plan a provision that excludes employees from participation in the plan if they become covered by a retirement plan negotiated by a union.

Members Johansen and Babson, in the absence of exceptions to that unfair labor practice finding, adopted the judge's remedial order requiring the employer to amend the eligibility article by deleting portions that "require that Respondent exclude from participation employees covered by a retirement plan resulting from collective bargaining through a labor organization."

Members Stephens would revise the judge's remedial order to permit an amendment that makes the participation of bargaining unit employees in the profit sharing plan a matter to be negotiated in the context of a collective-bargaining agreement.

The Board affirmed the judge's recommendations that union objections to the election in the underlying representation case be sustained, that the results of an election showing a 53-16 vote against Teamsters Local 150 be set aside, and that a second election be held.

(Members Johansen, Babson and Stephens participated.)

Charge filed by Teamsters Local 150; complaint alleged violation of Act's 8(a)(1). Hearing at Sacramento on 29 November 1983. Adm. Law Judge Gerald A. Wacknov's decision issued 6 March 1984.

* * *

Teamsters Local 115 (4-CB-5976, 5103; 282 NLRB No. 8) Philadelphia, Penna. 31 October. Members Johansen and Stephens approved a formal settlement stipulation entered into by Teamsters Local 115 and recommended by the General Counsel, imposing a cease-and-desist order on the union from engaging in many serious acts of picket line misconduct. Chairman Dotson dissented.

In approving the stipulation, the panel majority noted that unlike the situation in two recent Board cases against the union, the settlement was executed prior to a hearing on the complaint, and in exchange for a narrow order and nonadmission clause, the General Counsel obtained a remedial order covering all of the alleged violations without the expense and uncertainties of litigation.

The panel majority further noted that since the Board has obtained court enforcement of the broad order against the union in one of the two cases, "the inclusion of a broad order here would add nothing to the power the Board already possesses to seek contempt sanctions against the union for any future violations."

Chairman Dotson, finding the settlement inadequate, commented that the "inclusion in this stipulation of narrow injunctive language or of a nonadmission clause cannot be tolerated." Noting that the union "has repeatedly engaged in serious acts of violence," the Chairman added that "the General Counsel in

proposing the instant settlement stipulation and my colleagues in approving it have chose to ignore, if not flout," the two recent Board decisions.

Without a broad order or an admission by the union that it has engaged in the unlawful conduct alleged, Chairman Dotson stated, the Board order in this case "has little meaning and allows the Respondent to walk away virtually unscathed from its serious misconduct."

Regarding the court enforcement of the Board's previous order, Chairman Dotson commented that "the Board should view court enforcement of a Board Order as a means to toughen its stance against a respondent in future cases rather than a justification to impose weaker remedies."

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Quaker Rubber Company; parties entered into settlement stipulation 14 July 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Local 1-2, Utility Workers of America, AFL-CIO (Consolidated Edison Co. of N.Y., Inc.) (Individual), New York, N.Y. 30 September. 2--CB--11157; JD(NY)--89--86, Winifred D. Morio, Adm. Law Judge

The Blue Note (Hotel & Restaurant Employees Local 100), New York, N.Y. 30 September. 2-CA-21389, 2-CA-21389-2, 2-CA-21389-3; JD(NY)--92--86, Arthur A. Herman, Adm. Law Judge

Twistex, Inc. (National Assoc. of Government Employees (SEIU/AFL-CIO)), South Grafton, Mass. 30 October. 1--CA--23472; JD--286--86, Richard H. Beddow, Jr., Adm. Law Judge

Cablevision Industries, Finger Lakes Division (Communication Workers of America), Geneva, N.Y. 30 October. 3-CA-12830, 3-CA-13080; JD(NY)--100--86, Robert T. Snyder, Adm. Law Judge

USG Acoustical Products Co. (Paperworkers Local 158), Cloquet, Minn. 30 October. 18--CA--9465; JD--270--86, Marion C. Ladwig, Adm. Law Judge

High Key Distributing, A Divison of House of Kitchens, Ltd. (Carpenters Local 948), Sioux City, Iowa. 30 October. 18--CA--9601; JD--287--86, Walter J. Alprin, Adm. Law Judge

Teamsters Local 469 (Costal Tank Lines) (Individual), Newark, N.J. 30 October. 22-CB-5466; JD(NY)--99--86, James F. Morton, Adm. Law Judge

Thermo Electron Corp., Holcroft/Loftus, Inc. (Carpenters), Livonia, Mich. 28 October. 7--CA--24352, 7--CA--25506; JD--273--86, Lowell Goerlich, Adm. Law Judge

Land Air Delivery, Inc. (Teamsters Local 41), Kansas City, Kan. 30 September. 17--CA--12750; JD--262--86, Robert G. Romano, Adm. Law Judge

Wabash Alloys, Inc. (Individuals), Wabash, Ind. 30 September. 25--CA--15331, 25--CA--15544, 25--CA--15364; JD--264--86, Karl H. Buschmann, Adm. Law Judge

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. (Food and Commercial Workers Local 839), Oakland, Calif. 17 October. 32--CA--4225; JD(SF)--127--86, Jerrold H. Shapiro, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some requests for review may be filed with the Board.)

Alloy Wire Services, Inc. (25-RC-8376), Fort Wayne, Ind. 17 October. All production and maintenance employees shall vote for representation by Teamsters Local 414, or for no representation.

The Folger Coffee Co. (17-RC-9874), Kansas City, Missouri. 29 October. All full-time and regular part-time laboratory technicians and plant clerical employees shall vote for representation by Machinists and Aerospace Workers District 71, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2042

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

3 - 7 NOVEMBER 1986 W-2042

CASES SUMMARIZED

NEWARK PUBLIC LIBRARY
DEC 1 1986
U. S. GOVERNMENT DOCS.
DEPOSITORY 328

Plumbers Local No. 305 (Stone & Webster Engineering Corp. and Eastern Connecticut Mechanical Contractors Association, Inc.)	Uncasville, Conn.	2
Saints Mary and Elizabeth Hospital	Louisville, Ky.	1
Trustee of St. Joseph's College	Standish, Maine	1

OTHER CONTENTS

List of Decisions of Administrative Law Judges	2
List of Directions of Elections by Regional Directors	4
Request Form for Decisions	

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

LR1.15/2:

Trustee of St. Joseph's College (1-RC-17262; 282 NLRB No. 9) Standish, Maine. 5 November. The Board held that assertion of jurisdiction over the employer "presents a significant risk that the First Amendment will be infringed," and therefore it dismissed a petition filed by The Faculty Association of St. Joseph's College, Maine Teacher's Association and the National Education Association, seeking to represent full-time faculty at this 4-year liberal arts college founded by the Sisters of Mercy of Maine.

The employer had argued that the Board lacked jurisdiction over the college because it is church-operated within the meaning of the Supreme Court's decision in NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).

In dismissing the petition, the Board held that the Supreme Court's holding in Catholic Bishop "is not limited to parochial and secondary schools, but rather applies to all schools regardless of the level of education provided." Accordingly, the Board overruled Barber-Scotia College, 245 NLRB 406 (1979) and similar cases to the extent that the cases stand for the proposition that Catholic Bishop does not apply to colleges and universities.

However, the Board emphasized that Catholic Bishop does not preclude the assertion of jurisdiction over every religiously affiliated college or university. The Board did recognize that significant differences exist between colleges and universities on the one hand, and secondary and primary schools on the other, and that those differences will be one factor which the Board will consider when evaluating the pervasiveness of a school's religious orientation.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Saints Mary and Elizabeth Hospital (9-CA-20290, 20370; 282 NLRB No. 10) Louisville, Ky. 7 November. The Board upheld an administrative law judge's decision that the employer committed several bargaining violations that included refusing to furnish the Kentucky Nurses Association with names and addresses of current unit employees and unilaterally changing job posting procedures.

The judge found that the union had failed to establish clear, cogent and convincing objective considerations supporting a good faith belief that the union no longer enjoyed majority support. Accordingly, he found that the employer remained obligated to bargain with the union as the representative of its registered nurses, to deal with it as the incumbent union, and to refrain from unilaterally changing terms and conditions of employment.

The unfair labor practices occurred following a decertification election, the results of which the employer contested.

The employer contended the Board should apply the "at risk" doctrine of Mike O'Connor Chevrolet, 209 NLRB 701 (1974), to unilateral changes which were made after the decertification election. However, the Board ruled that even assuming the applicability of the "at risk" doctrine, it would still find the 8(a)(5) violations here because the Board has determined that the union won the election

and thereby affirmed its majority representative status. See Saints Mary & Elizabeth Hospital, 274 NLRB No. 86 (1985), and 277 NLRB No. 45 (1985).

On a related point, the Board noted its agreement with the judge that the filing of a decertification petition, standing alone, does not permit an employer to make unilateral changes.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Kentucky Nurses Association; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Louisville on 5 and 6 March 1984. Adm. Law Judge Michael O. Miller's decision issued 9 May 1984.

* * *

Plumbers Local No. 305 (Stone & Webster Engineering Corp. and Eastern Connecticut Mechanical Contractors Association, Inc.) (39-CB-660; 282 NLRB No. 12) Uncasville, Conn. Affirming an administrative law judge, the Board held that Plumbers Local 305 violated the Act by refusing to register for its hiring hall three members of Plumbers Local 76.

The three workers drove to Local 305's hiring hall to register on its out-of-work list but they were turned away by an office clerk and Assistant Business Manager who claimed to lack the authority to register them. The Business Manager was out of the office. Three weeks earlier, the attorney for Local 76 had advised Local 305 in writing that the three Local 76 members wished to register at its hiring hall and were entitled to do so under the Plumbers constititution.

The judge found that on previous occasions the Business Manager had authorized the office clerk and Assistant Business Manager to register members of other UA locals seeking employment. In the instant case, he said Local 305 discriminated against the three members by refusing to allow them to register simply because they were "travellers" from another local.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A) and (2). Hearing at Hartford on 29 and 31 October 1985. Adm. Law Judge Joel P. Biblowitz' decision issued 31 March 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

KAL Contracting Co., Inc. (Teamsters Local 247), Detroit, Mich. 6 November. 7--CA--25417(1), 7--CA--25417(2); JD--275--86, Lowell Goerlich, Adm. Law Judge

Peabody Coal Company Mine Workers District 23 (Individuals), Madisonville, Ky. 6 November. 9--CB--6408, 9--CB--6474; JD--292--86, David L. Evans, Adm. Law Judge

Pioneer Concrete Co. (Teamsters Local 624), Santa Rosa, Calif. 30 October. 20--CA--19854, 20--RC--15902; JD(SF)--133--86, Roger B. Holmes, Adm. Law Judge

Laverdiere's Enterprises (Teamsters Local 340), Winslow, Maine. 31 October. 1--CA--22,854, et al.; JD--289--86, Michael O. Miller, Adm. Law Judge

Ultra Power Services, Inc. (Electrical Workers (IBEW) Local 442), Burney, Calif. 30 September. 20--CA--20069; JD(SF)--122--86, Michael D. Stevenson, Adm. Law Judge

Howard Electrical and Mechanical, Inc. (Electrical Workers (IBEW) Local 68), Denver, Color. 30 September. 27--CA--8534, 27--CA--8659; JD(SF)--121--86, Frederick C. Herzog, Adm. Law Judge

The Sawmill Restaurant & Lounge (Hotel and Restaurant Employees Local 828), North Bend, Ore. 21 October. 36--CA--4857, 36--CA--4860; JD(SF)--126--86, Jerrold H. Shapiro, Adm. Law Judge

Washington Stair and Iron Works, Inc. (Ornamental Iron Workers Local 486), Washington, D.C. 4 November. 5-CA-17034, 5-CA-17269; JD--290--86, James J. O'Meara, Jr. Adm. Law Judge

EPE, Inc. (Clothing and Textile Workers), Fredericksburg, Va. 5 November. 5--CA--17,626, et al.; JD--285--86, Walter H. Maloney, Jr., Adm. Law Judge

Fleming Industries, Inc. (Teamsters Local 420), Los Angeles, Calif. 1 October. 31--CA--15467; JD(SF)--123--86, Richard D. Taplitz, Adm. Law Judge

Bingham Willamette (Boilermakers Local 72), Portland, Ore. 23 October. 36--CA--5213; JD(SF)--130--86, Jerrold H. Shapiro, Adm. Law Judge

ITT-FELEC Services, Inc. (Individual), Fairbanks, Alaska. 22 Ocotber. 19--CA--17725, 19--CA--18536; JD(SF)--131--86, Richard D. Taplitz, Adm. Law Judge

Uarco, Inc. (Graphic Communications District Council 2), Riverside, Calif. 30 September. 21--CA--24219, 21--CA--24425; JD(SF)--124--86, Gerald A. Wacknov, Adm. Law Judge

Pacific Mutual Insurance Co. (Atlanta Working Women), Atlanta, Ga. 4 November. 10-CA-21796; JD(ATL)--71--86, Hutton S. Brandon, Adm. Law Judge

Food and Commercial Workers Local 23 (V & G Foodland), Uniontown, Pa. 4 November. 6--CP--439; JD--284--86, Stephen J. Gross, Adm. Law Judge

Wackenhut Corp. (Individuals), Boston, Mass. 3 November. 1--CA--23,662(1) et al.; JD--288--86, Robert W. Leiner, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Wedco, Inc. (26-RC-6904), Memphis, Tenn. 7 November. All production and maintenance employees, including the draftsman/designer shall vote for representation by Rubber Workers, or for no representation.

Zappia Transportation Services, Inc. (3-RC-8970), Buffalo, N.Y. 5 November. All full time drivers and mechanics shall vote for representation by Teamsters Local 538, or for no representation.

Oakcrest Care Center (36-RC-4904), Seattle, Wash. 4 November. All non-professional employees, including certified nurses aides, nurses aides, housekeeping employees, laundry employees, dietary employees, social services director, activity directors, medical records clerk, receptionist/central supply clerk, certified medicine aides, and business office clerical employees shall vote for representation by Service Employees Local 49, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2043

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

10 - 14 NOVEMBER 1986 W-2043

CASES SUMMARIZED

A.L. Bachman Produce Co.	Pittsburgh, Penna.	5
Fairmont Hotel	San Francisco, Calif.	1
Great Western Produce, Inc.	Glendale, Ariz.	3
John M. Lumber Co.	Hamilton, O.	2
Laborers Local 304 (Herring & Worley, Inc.)	Oakland, Calif.	4
Majestic Molded Products, Inc.	Holbrook, N.Y.	3
Metcalf Excavating	Jackson, Mich.	2
Mine Workers District 2 and Local 2202 (Reitz Coal Co.)	Ebensburg, Penna.	3
Rustman Bus Company, Inc.	St. Louis, Mo.	6
Transport Service Co.	Hillsdale, Ill.	6
Wolff & Munier, Inc.	Newark, N.J.	5

NEWARK PUBLIC LIBRARY
DEC - 3 1986
DEPOSITORY 32B

OTHER CONTENTS

List of Decisions of Administrative Law Judges	7
Request Form for Decisions	

LR 1.15/2:

READEX FICHE best copy available

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

The Fairmont Hotel (20-CA-17743; 282 NLRB No. 27) San Francisco, Calif. 13 November. The Board held the employer did not violate the Act when it barred Teamsters Local 484 agents from using the privately owned area adjacent to the main entrance of the hotel as a location from which to distribute handbills in support of a union area-standards dispute with Bakers of Paris. Member Stephens issued a concurring opinion.

This case presented a conflict between the union's right under Section 7 of the Act to handbill and the employer's private property right.

The dispute arose in 1982 when three union officers distributed handbills to hotel guests at the steps of the elaborate main entrance. The hotel ordered them off the property or face arrest. The union handbillers moved to the public sidewalk in front of the hotel but were less successful because vehicles entering the hotel's driveway did not stop at the sidewalk, about 20 feet from the steps. After 30-45 minutes they left.

The non-union bakery with which the union had the area-standards dispute was unrelated to the hotel except to the extent that it supplied baked products served there. The bakery's employees performed no work at the hotel and made deliveries at the delivery entrance at the side of the hotel. The union did not claim to represent or seek to organize any employees of the hotel or the bakery.

Chairman Dotson and Members Johansen and Babson stated that the first task in such cases is to weigh the relative strength of each party's claim. They wrote: "If the property owner's claim is a strong one, while the Section 7 right at issue is clearly a less compelling one, the property right will prevail. If the claim is a tenuous one, and the Section 7 right is clearly more compelling, then the Section 7 right will prevail. Only in those cases where the respective claims are relatively equal in strength will effective alternative means of communication become determinative."

Applying those principles to the instant case, the Board concluded that the property rights asserted by Fairmont are more compelling than the Section 7 rights asserted by the union, and therefore concluded that it was not necessary to consider whether reasonable, alternative means by which the union could have communicated its message were available.

In evaluating Fairmont's property claim, the Board noted the hotel's valid interests in minimizing congestion, litter, possibility of theft of luggage, as well as maintaining hotel decorum and limiting potential tort liability.

Member Stephens concurred in the result because in his view even if the union's inability to reach patrons of the Fairmont is taken into account, the property rights at issue here still outweigh the Section 7 rights.

However, Member Stephens is "not ready to embrace an access rights test under which we would be barred from inquiring into the availability of reasonable effective alternative means of communication with the target audience

unless we found that the 'property rights' at issue were of relatively equal strength with Section 7 rights implicated in the activity on the affected property."

Further, he stated, we "may encounter cases in which we will not find the two categories of rights exactly in equipose but in which we still might find it desirable to factor into the 'accommodation' analysis the existence vel non on reasonable means of communicating with the target audience."

(Chairman Dotson and Members Johansen, Babson, and Stephens participated.)

Charges filed by Teamsters Local 484; complaint alleged violation of Act's Section 8(a)(1). Hearing at San Francisco on 11 April 1983. Adm. Law Judge Michael D. Stevenson's decision issued 21 June 1983.

* * *

Metcalf Excavating (7-CA-22378; 282 NLRB No. 18) Jackson, Mich. 10 November. The Board upheld an administrative law judge's backpay determinations and ordered the employer to pay Roy Foster Mullins the sum of $2,394.13, Kenneth F. Johnson the sum of $1,649.11, and Charlie M. Scott the sum of $4,080.62; and to pay contributions on their behalf to the welfare fund and pension fund totaling more than $10,000, pursuant to the labor contract negotiated by Teamsters Local 164.

The U.S. Court of Appeals for the Sixth Circuit in 1985 enforced a Board decision, ordering the employer to make whole the three employees for losses suffered and to make contributions to the funds.

The employer contested the backpay specification computations based upon the contractual wage rate for Scott and Johnson, contending that neither of them performed bargaining unit work the majority of the time on the job. The judge found that Johnson, Scott and Mullins all performed the same amount of bargaining unit work (truckdriving) and that since the employer conceded its obligation to pay Mullins the contractual wage rate, it is bound to pay Johnson and Scott the same wage rate.

(Chairman Dotson and Members Johansen and Babson participated.)

Backpay hearing at Jackson, 19 February and 5 May 1986. Adm. Law Judge Elbert D. Gadsden's decision issued 30 June 1986.

* * *

The John M. Horn Lumber Co. (9-CA-23318; 282 NLRB No. 23) Hamilton, O. 13 November. Members Johansen and Babson held that the employer illegally refused to bargain with Carpenters Local 415 after the union was certified as bargaining agent of all production and maintenance employees. Chairman Dotson dissented.

The panel majority granted summary judgment on a finding that all issues were or could have been litigated in the underlying representation proceeding. General Counsel's request for a visitorial cause was denied.

Chairman Dotson, dissenting, would deny the motion for summary judgment for reasons stated in his dissent in the representation proceeding, where he found merit to two employer election objections and where he would have set aside the election, as reported at 280 NLRB No. 69.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Carpenters Local 415; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 28 August 1986.

* * *

Majestic Molded Products, Inc. (29-CA-12430; 282 NLRB No. 21) Holbrook, N.Y. 13 November. On motion for summary judgment, the Board found unlawful the employer's refusal to bargain with Industrial Workers Local 424, certified representative of all production, maintenance, shipping and receiving employees.

Summary judgment was granted on a finding that all issues raised by the employer were or could have been litigated in the underlying representation proceeding.

(Chairman Dotson and Members Johansen and Babson participated.)

Charge filed by Industrial Workers Local 424; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 13 August 1986.

* * *

Great Western Produce, Inc. (28-CA-8526; 282 NLRB No. 17) Glendale, Ariz. 12 November. Granting summary judgment, the Board held unlawful the employer's refusal to bargain with Teamsters Local 83, certified collective-bargaining representative of the employer's truckdrivers, warehousemen, lumpers, mechanics, and repackers.

Summary judgment was granted on a finding that the employer did not raise any issue properly litigable in this proceeding.

(Members Johansen, Babson and Stephens participated.)

Charge filed by Teamsters Local 83; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 2 September 1986.

* * *

Mine Workers District 2 and Local 2202 (Reitz Coal Co.) (6-CB-6958; 282 NLRB No. 20) Ebensburg, Penna. 12 November. The Board affirmed an administrative law judge's decision that the union did not illegally penalize Charles Gindlesperger by enforcing rules applied to a strike situation after he filed a charge with the Board.

According to the judge who recommended dismissing the complaint, the union penalized Gindlesperger because of "his unprecedented misconduct as a union member."

While picketing the employer's coal mine, Gindlesperger earned over $1,000 a month from June to mid-November 1985 with another company, and also received weekly payments from a union strike assistance program.

Program guidelines require that members remain in good standing by paying dues which are $1.25 a month during a strike, but $40 a month for any striker earning over $1,000 a month. As Gindlesperger paid only a total of $3.75 in dues for June through September 1985, the union penalized him in accordance with strike assistance program guidelines.

The Board found that even if the General Counsel had made a prima facie case, the union established that, in the absence of the filing of the charge, Gindlesperger would have received the same penalty under rule 7 of the union strike assistance program guidelines which call for a 1-week penalty for each week a member has a dues delinquency.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Ebensburg on 26 March 1986. Adm. Law Judge Thomas A. Ricci's decision issued 5 June 1986.

* * *

Laborers Local 304 (Herring & Worley, Inc.) (32-CC-1024; 282 NLRB No. 14) Oakland, Calif. 12 November. In agreement with an administrative law judge's decision, the Board held that the union violated the Act by picketing an entrance to a building rehabilitation project during September 1985 in disregard of a reserved-gate system; and by inducing and encouraging employees of general contractor William J. Sinay, Inc. to stop working at the project, in furtherance of the union's primary labor dispute with Herring & Worley.

The union initially picketed a project entrance which H & W had originally reserved for it to share with another contractor. However, H & W changed that arrangement, posted the appropriate signs, and reserved an entrance for its use only. The other entrance, which the union picketed throughout September 1985, was reserved for use by all other contractors.

The judge found that an object of the picketing, as reinforced by unlawful union remarks, was to enmesh neutrals in a dispute not their own. He rejected the union contention that "it was misled because H & W engaged in chicanery calculated to confuse the Respondent as to the appropriate situs of the picketing." Also rejected was the union argument that confining the picketing to one entrance "unduly restricted Respondent's statutory rights" by making the picketing "invisible from and to the public way."

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Herring & Worley, Inc.; complaint alleged violation of Act's Section 8(b)(4)(ii) and (ii)(B). Hearing at Oakland on 5 and 6 March 1986. Adm. Law Judge Richard J. Boyce's decision issued 19 August 1986.

* * *

A.L. Bachman Produce Co. (6-CA-17657; 282 NLRB No. 15) Pittsburgh, Penna. 12 November. The Board found the allegations of a backpay specification to be true, in light of the employer failure to file an answer, in accordance with Board rules and regulations.

Summary judgment was granted, and the employer was ordered to make whole discriminatee Nelson A. Williams by paying him $13,233.53 plus interest.

The Board had ordered in a decision reported at 276 NLRB No. 80 that Williams be reimbursed for loss of earnings and benefits resulting from an unlawful discharge. The order was enforced by the Third Circuit.

(Chairman Dotson and Members Babson and Stephens participated.)

General Counsel's motion for summary judgment upon backpay specification for failure to file an answer filed 6 August 1986.

* * *

Wolff & Munier, Inc. (22-CA-10279; 282 NLRB No. 22) Newark, N.J. 14 November. In this supplemental proceeding, the Board reaffirmed a 1982 decision and order (262 NLRB 333) in which the Board declined to defer to a joint conference committee decision, and found that the employer unlawfully discharged Robert Campione, Ralph Campione and Walter Dowd because of their activities on behalf of Plumbers Local 24.

This U.S. Court of Appeals for the Third Circuit had remanded the earlier case to the Board to determine whether the findings by the joint conference committee were a resolution of a statutory inquiry as to whether the discriminatees were supervisors within the meaning of the Act and whether those findings warranted deferral.

The Board on remand found that the joint conference committee did not consider or resolve the statutory inquiry as to whether the alleged discriminatees were supervisors within the meaning of the Act. Accordingly, the Board determined that deferral was not appropriate under Olin Corp., 268 NLRB 573 (1984) and Spielberg Manufacturing Co., 112 NLRB 1080 (1955).

(Chairman Dotson and Members Johansen and Stephens participating.)

Supplemental hearing at Newark, 3 March 1986. Adm. Law Judge D. Barry Morris' supplemental decision issued 29 June 1986.

Transport Service Company (33-CA-5239, et al.; 282 NLRB No. 11) Hillsdale, Ill. 13 November. The Board agreed with an administrative law judge that complaint allegations regarding the transfer of unit work and equipment to other locations, the use of nonunit drivers to perform unit work, and the failure to comply with the guaranteed workweek provisions of contract, be deferred to the grievance-arbitration procedures in the collective-bargaining agreement between the employer and Teamsters Local 279.

In adopting the judge's dismissal of these allegations in deference to the contractual grievance-arbitration procedures, the Board found it unnecessary to rely on the judge's discussion of the merits of the allegations or on his incorrect assumption that Teamsters Local 705 would be able to participate in grievance-arbitration proceedings under the contract.

Instead, the Board found that deferral is appropriate under the standards of United Technologies Corp., 268 NLRB 557 (1984), because the dispute involves an interpretation of various contract provisions, the broad arbitration clause in article 8 of the collective-bargaining agreement clearly encompasses the matters at issue, the employer asserted its willingness to arbitrate the dispute, and the parties have a stable collective-bargaining relationship.

Regarding other issues, the Board in agreement with the judge held that the employer violated the Act by bypassing the union and bargaining with its employees about contract concessions; by threatening its employees for processing grievances; and by refusing to pay its drivers Sunday and holiday permium pay and refusing to pay its garage employees the wage increases and COLA when due under the contract.

(Members Johansen, Babson and Stephens participated.)

Charges filed by Teamsters Local 279; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Decatur 1, 2 and 3 November 1982, and at Peoria 1, 2, 3, 4, 28 February and 1 March 1983. Adm. Law Judge Wallace H. Nations' decision issued 19 April 1984.

* * *

Rustman Bus Company, Inc. (14-RC-10082; 282 NLRB No. 25) St. Louis, Mo. 14 November. The Board held that the Regional Director had properly asserted jurisdiction over the employer which contractually provides daily school bus transportation and related services to the State of Missouri and various public school districts.

The employer had contended that the Board should not assert jurisdiction over its operations because, by virtue of the contracts, it was performing a function intimately connected with that of entities exempt from the Board's jurisdiction under Section 2(2) of the Act.

While the exempt entities with which the employer has contracted monitor the employer's performance in providing services under its contracts, the Board found that such monitoring consists largely of operational controls and is not so restrictive as to preclude the employer from engaging in meaningful collective bargaining.

The various contracts require the employer to supply drivers who meet specified minimum requirements; however, the exempt entities do not participate in interviewing applicants, making hiring decisions, or adjusting grievances. The contracts do not give the exempt entities any right to impose discipline on a driver.

In prior school bus cases where the Board has declined to assert jurisdiction, the exempt entities had retained considerable control over the terms and conditions of employment of the private employer's employees.

In this case, the Board found that, while the exempt entities monitor the employer's performance in providing services under its contracts, such monitoring consists largely of operational controls; and that the actions do not rise to a level which impinges on either the day-to-day operations of the employer or on the employer's ultimate control of labor relations.

(Chairman Dotson and Members Johansen, Babson and Stephens participated.)

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

A.J. Ross Logistics, Inc. (Individual), Keasbey, N.J. 10 November. 22-CA-14209; JD(NY)-103-86, Edwin H. Bennett, Adm. Law Judge

The Armstrong Rubber Co. (Rubber Workers Local 670), Madison, Tenn. 13 November. 26-CA-11586; JD--293--86, Nancy H. Sherman, Adm. Law Judge

Consolidated Freightways Corp. of Delaware (Teamsters Local 579), Janesville, Wis. 10 November. 30-CA-8929, 30-CA-9218; JD--283--86, Wallace H. Nations, Adm. Law Judge

REDD-I, Inc. (Sheet Metal Workers), Chattanooga, Tenn. 10 November. 10-CA-21436; JD(ATL)--72--86, J. Pargen Robertson, Adm. Law Judge

B.R.B. Iron Works, Inc. (Ornamental Iron Workers Local 455), New York, N.Y. 10 November. 29-CA-11244; JD(NY)--102--86, Raymond P. Green, Adm. Law Judge

R.H. Cole Truck Service (Individual), West Windsor, N.Y. 12 November. 3--CA--13295; JD--295--86, Joel A. Harmatz, Adm. Law Judge

U.S. Postal Service (Individual), Denver, Colo. 30 October. 27--CA--9168-P; JD(SF)--134--86, Joan Wieder, Adm. Law Judge

Armored Transport of California, Inc. (Currency and Securities Handlers Assoc.), Oakland, Calif. 31 October. 32--CA--8085; JD(SF)--132--86, Burton Litvack, Adm. Law Judge

Adair Standish Corp. (Graphic Communications Local 282-C), Standish, Mich. 5 November. 7--CA--25973; JD--294--86, Bernard Ries, Adm. Law Judge

Action Drywall (Individual), Vista, Calif. 4 November. 21--CA--24724; JD(SF)--136--86, William J. Pannier III, Adm. Law Judge

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2044

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

NEWARK PUBLIC LIBRARY
DEC 1 0 1986
W-2044
U. S. GOVT. PUBS.
DEPOSITORY 378

17 - 21 NOVEMBER 1986

CASES SUMMARIZED

American International College	Springfield, Mass.	7
Anaheim Town and Country Inc.	Anaheim, Calif.	2
Appalachian Power Co. John E. Amos Plant	Charleston, W.Va.	3
Athey Products Corp.	Sioux Falls, S.D.	5
Barnes Excavating	Augusta, W.Va.	4
Bryan Memorial Hospital	Lincoln, Neb.	7
Consumers Power Co.	Grand Rapids, Mich.	1
Johns-Mansville Sales Corp.	Laurinburg, N.C.	1
Kawaski Motors Corp., U.S.A.	Lincoln, Neb.	4
Miami Health Care Center	Troy, O.	7
Michigan Expediting Service, et. al.	Detroit, Mich.	6
Pacific Coast Metal Trades District Council	Seattle, Wash.	8
The Lewis Grocer Company	Indianola, Miss.	5

LR 1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 9

List of Directions of Elections by Regional Director 10

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Johns-Mansville Sales Corporation (11-CA-10739, 10850; 282 NLRB No. 40) Laurinburg, N.C. 18 November. Contrary to an administrative law judge, the Board found that the employer had a legitimate basis for withdrawing recognition from the Rubber Workers in March 1983, 14 months after the union was certified.

The Board found the employer was privileged to rely on an employee decertification petition, signed by 46 out of 72 employees, as a basis for a good-faith doubt of the union's continuing majority status.

Even though the Board found that the employer violated the Act in July 1982 by unilaterally changing its policy of laying off employees in order of seniority and by laying off employees in July 1982 without regard to their seniority rights, the Board did not view the violation as having been of such a character so as to preclude the employer from asserting a good-faith doubt of the union's majority status some 8 months later in March 1983.

While not viewing lightly the employer's unlawful unilateral change, the Board noted that this conduct directly affected only three employees who may otherwise have remained working during the layoff absent the employer's unlawful unilateral action. Furthermore, the Board noted, the employer advanced a reasonable business justification for wishing to retain junior maintenance employees -- to do some repair work -- during the layoff period, and it continued to meet and bargain with the union for almost 8 months after the unilateral changes.

Accordingly, the Board dismissed allegations that the employer violated the Act by withdrawing recognition from the union in March 1983, by failing to supply the union in March 1983 with wage and benefit data the union had requested, and by unilaterally laying off employees in November 1983.

(Chairman Dotson and Members Johansen, Babson and Stephens participated.)

Charges filed by Rubber Workers; complaint alleged violation of Act's Section 8(a)(5). Hearing at Laurinburg on 6 and 7 December 1983. Adm. Law Judge Burton S. Kolko's decision issued 25 June 1984.

* * *

Consumers Power Company (7-CA-20060; 282 NLRB No. 24) Grand Rapids, Mich. 14 November. Member Johansen and Stephens held that the employer violated the Act by discharging Robert Knight because he protested working conditions, and that Knight's raising his fists reflexively during his protest to his supervisor was not so egregious as to lose protection of the Act for his concerted activity.

Dissenting, Chairman Dotson would find Knight was not acting in concert with any other employee during the incident which gave rise to his discharge, and that the employer could not have known Knight had acted concertedly at any other relevant time. Chairman Dotson would also find that Knight was, at any rate, discharged for assaulting his supervisor, not for any reason prohibited by the Act.

Members Johansen and Stephens held that Knight acted "with" Tom Young within the meaning of Meyers Industries in complaining to supervisor Currie about dispatching meterman Young, without police protecton, to a home at which Knight had been threatened earlier. The panel majority also held that Knight acted "on the authority of" Young because Young had acquiesced in Knight's suggestion that "we had better go and get supervision in on this before somebody gets killed."

The panel majority noted in particular that the metermen, including Knight, suggested specifically that the employer should provide them with more protection from customer violence. Thus, even if Knight had acted alone, his individual complaint would have been a continuation of his and his coworkers' earlier concerted complaints at the employer's weekly meetings to discuss safety issues, the majority held.

The panel found irrelevant the fact that Currie earlier warned Knight to be "very careful" about raising his fists again.

In his dissent, Chairman Dotson stated "my colleagues do not find that the Respondent retaliated against Knight for his safety complaint, and my review of the record convinces me that they are correct in declining to do so. The record suggests that the Respondent was in fact receptive, not hostile, to safety complaints. It held regular weekly meetings to discuss safety complaints without reprisal. Thus, the only reasonable conclusion is that the Respondent was solely motivated by Knight's second assault on his supervisor in deciding to discharge him."

(Chairman Dotson and Members Johansen and Stephens participated.)

Charge filed by Michigan State Utility Workers Council; complaint alleged violation of Act's Section 8(a)(1). Hearing at Grand Rapids, Mich. on 12 October 1982. Adm. Law Judge Richard H. Beddow, Jr.'s decision issued 14 January 1983.

* * *

Anaheim Town and County Inc. (21-CA-24273; 282 NLRB No. 34) Anaheim, Calif. 20 November. The Board affirmed an administrative law judge's dismissal of the complaint alleging that the employer illegally refused to honor a collective-bargaining agreement executed by its manager and Hotel Employees Local 681; and illegally discharged Monique Tihanyi because of her involvement with the union.

The judge found the contract was void and unenforceable because the authorization cards the union obtained to support its majority status were tainted by employer involvement and because the union therefore did not represent an uncoerced majority at the time recognition was granted and the contract was executed.

Regarding the other allegations, the judge held that Tihanyi was a top level supervisor with a great deal of independent authority. As a supervisor, her union activity was not protected by the Act, he concluded.

(Chairman Dotson and Members Babson and Stephens participated.)

Charge filed by Hotel Employees Local 681; complaint alleged violation of Act's Sections 8(a)(1), (3) and (5). Hearing at Los Angeles, 19-21 February and 4 March 1986. Adm. Law Judge Richard D. Taplitz's decision issued 23 June 1986.

* * *

Appalachian Power Co. John E. Amos Plant (9-CA-11951, et. al.; 282 NLRB No. 26) Charleston, W.Va. 17 November. Affirming an administrative law judge's decision in this supplemental proceeding, the Board ordered the employer to comply with a previous Board order and proceed to arbitration on five grievances.

In a 1980 decision, the Board had ordered the employer to reinstate the grievance-arbitration procedure of its Green Book, which set forth the rules and regulations governing unit employees prior to certification of Steelworkers Local 8621 on 20 May 1977. The U.S. Court of Appeals for the Fourth Circuit enforced the Board order, and the Supreme Court denied the employer's petition for a writ of certiorari.

The dispute arose over how many grievances of approximately 70 were to be arbitrated. The employer contended that only eight grievances, which were processed by the parties through the last level of the grievance procedure in August 1978, were arbitrable pursuant to the Board order. The employer contended that none of the remaining grievances were arbitrable because they were either not timely processed through the Green Book procedure, or not arbitrable under the express criteria of the Green Book.

The parties agreed in June 1978 to process grievances through the last level, but despite repeated requests made by the employer to process more than the eight, the union did not respond.

The judge disagreed with General Counsel's argument that because of confusion in the minds of employees filing grievances during the involved period, the failure to timely process their grievances to the final step should be overlooked. Regardless of the state of mind of individual bargaining unit members, the judge stated "the Union had the responsibility of processing grievances during the period of time in question... . The fact that an ongoing controversy existed during that time as to the ultimate arbitrability of the involved grievances does not excuse the union's inaction in processing the grievances to the last level pursuant to its agreement with the employer."

The judge held that only five of the grievances were arbitrable under the procedural and timeliness provisions set forth in the Green Book.

(Chairman Dotson and Members Johansen and Babson participated.)

Supplemental hearing 25 March 1986 at Charleston. Adm. Law Judge Wallace H. Nations' supplemental decision issued 22 July.

* * *

Kawaski Motors Corp., U.S.A. (17-CA-8737, et. al.; 282 NLRB No. 28) Lincoln, Neb. 17 November. In a supplemental decision, the Board upheld, with modification, the judge's supplemental decision and second supplemental decision, and ordered the employer to pay Daniel R. Bennett as net backpay the amount of $50,885.88, less reductions resulting from the tolling of backpay for the 4-month period Bennett removed himself from the work force by virtue of his active duty with the Air Force National Guard.

In a 1981 decision, the Board had directed the employer to make Bennett whole for any loss of earnings suffered as a result of his unlawful discharge. The U.S. Court of Appeals for the Ninth Circuit enforced the Board order. Thereafter, a controversy arose over the amount of backpay due.

The Board disagreed with the judge's finding that Bennett's pay from the military should be used to offset the employer's backpay liability, and excluded the 4-month period that Bennett was on active duty from the backpay period.

The backpay amount is also to be adjusted to reflect the judge's findings that Bennett, a mechanic apprentice, would have been promoted to maintenance mechanic during the backpay period and should be compensated as well for lost opportunities for overtime.

(Chairman Dotson and Members Johansen and Babson participated.)

Supplemental hearing at Lincoln, 8-10 November 1983. Adm. Law Judge Robert T. Wallace's supplemental decision issued 30 January 1985, and second supplemental decision issued 4 June 1986.

* * *

Barnes Excavating (5-CA-18006; 282 NLRB No. 13) Augusta, W. Va. 18 November. The Board held that the employer violated the Act by threatening to discharge and discharging five employees for their protected concerted activity in refusing to commence work until they received overdue paychecks.

Summary judgment was granted in the absence of good cause being shown by the employer for failure to file a timely answer.

(Chairman Dotson and Members Babson and Stephens participated.)

Charge filed by individual; complaint alleged violation of Act's Section 8(a)(1). General Counsel's motion for summary judgment filed 10 September 1986.

* * *

Athey Products Corporation (18-CA-9609; 282 NLRB No. 29) Sioux Falls, S.D. 20 November. The Board agreed with an administrative law judge that the employer violated the Act by repudiating its collective-bargaining agreement with Industrial Workers Local 470 as it pertains to group health insurance coverage, the grievance procedure, and the selection of an arbitrator.

In implementing significant changes in its employees' insurance coverage, the judge held, the employer ignored the contractual requirement that it give the union a chance to review and accept such changes.

The employer made the changes set forth in a notice to employees without obtaining the union's acceptance. The judge found that the employer conduct violated its statutory duty to bargain with the union about a mandatory subject.

The employer refusal to process grievances, was based on a contention that under the contract, the union president did not qualify. This was an attempt to make a unilateral and significant change in the contract's grievance procedure, the judge found.

For the purposes of processing grievances, the judge held, the employer had no authority to challenge the incumbency of the union president. He held that the employer was obliged to treat the vice president as "President of the Union" for the purposes of contractual procedure, in the absence of the president. He also found no merit in an employer objection that grievances filed by the union on 27 March and 16 April 1986 were not in proper written form as the contract required.

Regarding a final issue, the employer conceded that it refused to select an arbitrator from a panel of five arbitrators provided by the Federal Mediation and Conciliation Service, but argued in substance that its conduct should be excused because the FMCS panel included a majority biased and prejudiced against it by earlier connections with unions.

The judge found no merit in the employer's "attempt to legitimize its conduct." The judge agreed with the General Counsel that the employer violated its statutory obligation to bargain in good faith by blocking the implementation of the contractual arbitration provision.

(Chairman Dotson, and Members Johansen and Babson participated.)

Charges filed by Industrial Workers; complaint alleged violation of Act's 8(a)(5) and (1). Hearing at Sioux Falls on 23 June 1986. Adm. Law Judge Leonard M. Wagman's decision issued 19 August 1986.

* * *

The Lewis Grocer Company (26-CA-11139, et al.; 282 NLRB No. 19) Indianola, Miss. 18 November. Affirming an administrative law judge's dismissal of the complaint,

the Board held that the employer did not engage in any of the numerous unfair labor practices the employer allegedly committed in connection with an organizing effort of Teamsters Local 891.

A principal issue was the alleged discriminatory discharge of Robert Skelton, who initially contacted the union in 1983 and again in 1985 about organizing the company's drivers.

The General Counsel did establish sufficient evidence to support an inference that protected conduct was a motivating factor in the employer decisions to issue a warning to Skelton about his violating Department of Transporation rules and then to discharge him, the judge found; however, he further concluded that the employer had demonstrated its reasons for discharging Skelton were not pretextual and that it would have discharged him for his DOT rule violations which occurred after he had been given a final warning, even in the absence of any protected conduct on his part.

The judge also found that the employer did not violate the Act by questioning Alton J. Rodgers; by issuing disciplinary warnings to Rodgers, Skelton, Luther L. Taylor, Doug Jones, and Booker Williams; any by issuing a 3-day suspension to Johnny Dodd.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by individuals; complaint alleged violation of Act's Sections 8(a)(1), (3), and (4). Hearing at Greenville, on 7, 8 and 9 October 1986. Adm. Law Judge William N. Cates' decision issued 17 March 1986.

* * *

Michigan Expediting Service; et al. (7-CA-25514; 25533; 282 NLRB No. 30) Detroit, Mich. 20 November. In the absence of good cause being shown by the employer for its failure to file a timely answer, the Board partially granted summary judgment, and held that the employer violated the Act by discharging and inflicting bodily harm on Ewan Greig; by telling employees that Greig was discharged because of his support for and/or activities on behalf of Teamsters Local 299; and by discharging William Moss for his union support and/or activities.

Summary judgment was denied insofar as it alleged that a bargaining order was appropriate. The Board remanded the case for hearing before an administrative law judge to determine the appropriateness of a bargaining order as an additional remedy here.

(Members Johansen, Babson and Stephens participated.)

Charges filed by individual and Teamsters Local 299; complaint alleged violation of Act's Section 8(a)(3) and (1). General Counsel's motion for default summary judgment filed 2 July 1986.

* * *

American International College (1-RC-16265; 282 NLRB No. 16) Springfield, Mass. 20 November. The Board found that the faculty of this private undergraduate college are managerial employees, and dismissed a petition filed by The American International College Chapter of American Association of University Professors seeking to represent full-time faculty.

The employer took the position that all full-time faculty members are managerial or supervisory personnel and are not employees within the meaning of the Act.

In dismissing the petition, the Board held that the faculty makes effective decisions in the majority of critical areas relied on by the Supreme Court in Yeshiva University and subsequent Board cases to be indicative of managerial status. The faculty, through their participation on faculty committees, as departmental chairpersons, and as members of the faculty as a whole, effectively determines the curriculum and academic policies and standards of the college and exerts significant influence in decisions regarding hiring, tenure, and evaluation of their fellow faculty members. Therefore, the Board held that the full-time faculty are managerial employees and thus excluded from coverage under the Act.

(Chairman Dotson and Members Johansen and Babson participated.)

* * *

Bryan Memorial Hospital (17-CA-12339; et. al.; 282 NLRB No. 32) Lincoln, Neb. 21 November. The Board held that the employer violated the Act by making several unilateral changes in its employees' terms and conditions of employment without notifying or bargaining with the Nebraska Nurses Association.

All jurisdictional and evidentiary issues raised were litigated in a previous unfair labor practice proceeding, 279 NLRB No. 39, the Board found in granting summary judgment. The employer had urged denial of summary judgment on the ground that the earlier decision was being appealed to the U.S. Court of Appeals for the Eighth Circuit.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Nebraska Nurses Association; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 22 September 1986.

* * *

Miami Health Care Center (8-CA-18242, et al.; 282 NLRB No. 33) Troy, O. 20 November. In agreement with an administrative law judge, the Board held that the employer illegally terminated Robin Gross on 6 June 1985, and Violet Ferguson and Linda Welbaum on 16 July 1985 because of their activity for Teamsters Local 957, and their protected concerted activity in pursuing a lawsuit for invasion of privacy.

The union, which in late February or early March 1985 began its organizing drive at this nursing home, failed to receive a majority of the ballots cast in an election held in August 1986, and the results were certified.

Ferguson, Welbaum and four other employees are plaintiffs in a civil lawsuit against the employer, alleging that a listening device was found in the break room.

Even through Gross, Ferguson and Welbaum violated work rules for which termination was a possible discipline, the judge found that the employer's reasons for terminating them were pretextual.

The judge found that the General Counsel did establish a prima facie case showing union animus, and animus toward Gross, Ferguson and Welbaum particularly for their pro-union activities, and showing that this animosity motivated the terminations.

Further, the judge found that the timing of the discharges supported the General Counsel's position that the reason for the firings was pretextual.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by individuals; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Troy on 28-30 January 1986. Adm. Law Judge Wallace H. Nations' decision issued 15 August 1986.

* * *

Pacific Coast Metal Trades District Council (19-CB-5607; 282 NLRB No. 41) Seattle, Wash. 21 November. Affirming an administrative law judge's dismissal of the complaint, the Board held that the district council did not violate the Act by refusing to execute a letter of agreement with respect to a mid-term contract modification concerning utilization of medical screening of unit employees.

The district council did not contest that its negotiators reached the agreement regarding medical screening, but argued that the agreement was not final, and was subject to review and ratification by Electrical Workers (IBEW) Local 46 and Boilermakers Local 104, two district council members.

The judge found that the agreement was susceptible to review by Locals 46 and 104 because of previous Board orders that the employer bargain wiht the two locals as the exclusive representative of unit employees; and because the employer originally invited Locals 46 and 104 to bargain, and later extended the invitation to other locals and the district council. As Local 46 raised objections, the judge found that at no time was there a final agreement which the district council was obligated to sign.

The Board agreed with the judge that this case should not be deferred to an arbitrator as the deferral doctrine does not apply to disputes about the existence of a modification of a collective bargaining agreement.

The Board also noted that the actions here began when Lockheed, pursuant to a previous Board order, contacted Locals 46 and 104 to bargain over its proposed medical screening program. When compliance with a Board order is at issue, deferral is inappropriate, the Board stated.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charge filed by Lockheed Shipbuilding Company; complaint alleged violation of Act's Section 8(b)(3). Hearing at Seattle, 14 January 1986. Adm. Law Judge Clifford H. Anderson's decision issued 20 June 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Goren Printing Co., Inc. (Graphic Communications Local 600 and individual), Boston, Mass. 20 November. 1--CA--23817, et al.; JD--300--86, Walter H. Maloney, Jr., Adm. Law Judge

United Telephone Co. of Ohio (Individual), Wooster, O. 19 November. 8--CA--18896; JD--297--86, Benjamin Schlesinger, Adm. Law Judge

Boland Marine and Manufacturing Co., Inc. (Boilermakers Local 37), New Orleans, La. 21 November. 15--CA--5874, 15--CA--6099; JD--282--86, Thomas D. Johnston, Adm. Law Judge

Yellow Cab Company, City Cab Co. and Checker Cab Co. (Service Employees Local 750), Orlando, Fla. 17 November. 12-CA-11851; JD(ATL)--70--86, William N. Cates, Adm. Law Judge

Frank Mascali Construction G.C.P. Co. and Teamsters Local 282 (Individuals), Flushing, N.Y. 17 November. 29--CA--5975, et. al.; JD--291--86, William F. Jacobs, Adm. Law Judge

Schwebel Baking Co. (Individual), Youngstown, O. 20 November. 8--CA--17766; JD--279--86, George F. McInerny, Adm. Law Judge

Allied Workers Local 15 (Owens-Corning Fiberglass Corp.) (Individual), Anderson, S.C. 20 November. 11-CB-1441; JD(ATL)--74--86, Hutton S. Brandon, Adm. Law Judge

Angelica Healthcare Services Group, Inc. (Clothing and Textile Workers), Milford, Conn. 19 November. 39--CA--2643; JD(NY)--101---86, D. Barry Morris, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representative cases. In some, requests for review may be filed with the Board.)

Kaiser Foundation Health Plan of the Northwest and Kaiser Foundation Hospitals and Northwest Permanente Medical Group (36-RC-4877), Seattle, Wash. 10 November. All professional employees shall vote for representation by Federation of Nurses and Health Professionals/American Federation of Teachers, or for no representation.

Poughkeepsie Cablevision, Inc. (3-RC-8972), Buffalo, N.Y. 17 November. All cable technicians, installers and program department employees, and all office clerical employees, including customer service representatives shall vote for representation by Communications Workers Local 1120, or for no representation.

Murmac Marketing Group, Ltd. (22-RC-9629), Newark, N.J. 18 November. All production and maintenance employees shall vote for representation by Electrical Workers Local 1408 (IBEW), or for no representation.

Mid-State Contractors Equipment Co., Inc. (3-RD-915), Buffalo, N.Y. 18 November. All employees, excluding all professional employees, guards and supervisors shall vote for representation by Operating Engineers Local 545, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2045

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

24 - 28 NOVEMBER 1986

W-2045 PUBLIC LIBRARY
DEC 17 1986
U. S. GOVT. PUBS.
DEPOSITORY

CASES SUMMARIZED

C-E Natco/C-E Invalco	Tulsa, Okla.	1
Cemcom of Missouri	St. Louis, Mo.	4
Dublin Town Ltd.	New York, N.Y.	2
Einhorn Enterprises, Inc.	Jamaica, N.Y.	7
Heck's, Inc.	Oak Ridge, Tenn.	3
La Famosa Foods, Inc.	Staten Island, N.Y.	7
Manhattan Graphic Productions and Ace Typographers	New York, N.Y.	5
Norris Concrete Materials, Inc.	Pisgah Forest, N.C.	1
Operating Engineers Local 295-295C (Weather Wise Conditioning Corp.)	New York, N.Y.	6
Operating Engineers Local 825	Forked River, N.J.	8
Pony Express Courier Corp.	Helena, Missoula, Billings, and Great Falls, Mont.	2
Professional Mechanical Insulators, Inc.	Denver, Colo.	7

LR1.15/2:

OTHER CONTENTS

List of Decisions of Administrative Law Judges 8

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Norris Concrete Materials, Inc. (11-CA-9735, 10403; 282 NLRB No. 45) Pisgah Forest, N.C. 28 November. Contrary to an administrative law judge, the Board held that the withdrawn charge in Case 11-CA-9735 was properly reinstated beyond the 6-month period of Section 10(b); and that the employer violated the Act by discharging Clarence Dodson in December 1980, and by threatening to give, or giving, an employee an unfavorable job reference in retaliation for filing charges with the Board.

The charge was withdrawn following the parties' non-Board settlement agreement in Case 11-CA-9735. Pursuant thereto, Dodson returned to work in March 1982. However, in May 1982 Dodson filed another charge alleging that he had been constructively discharged shortly after his reinstatement because he had filed charges with the Board.

The Board found that the employer entered into the settlement with a specific intent to circumvent its terms. To accomplish this, the Board found that the employer established new employee classification and discipline systems designed to "starve out" Dodson and force him to resign. Further, the Board found that groundless warnings issued to Dodson, temporary layoffs, and the constructive discharge indicate that the purpose of the settlement to remedy past alleged unfair labor practices was not achieved.

The Board held that the employer's postsettlement unfair labor practices not only substantially impeded the implementation of the settlement, they effectively nullified the settlement by negating its terms and purpose. Because the employer used a non-Board settlement in a postcomplaint situation as a subterfuge to avoid its liability under the Act, the Board held that reinstitution of formal proceedings through the reinstatement of a withdrawn charge was appropriate despite the expiration of the Section 10(b) period.

Regarding other issues, in agreement with the judge, the Board held that the employer violated the Act by threatening employees with discharge if they testified at an unfair labor practice hearing before the Board, and by issuing written warnings to, and by constructively discharging, employee Clarence Dodson.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1) and (4). Hearing at Brevard, N.C., 30 and 31 August 1982. Adm. Law Judge William N. Cates' decision issued 17 March 1983.

* * *

C-E Natco/C-E Invalco (16-CA-10037; 282 NLRB No. 47) Tulsa, Okla. 28 November. The Board held taht make-whole relief was warranted to remedy the violations found in its 1984 decision reported at 272 NLRB 502, and amended the order to include provisions requiring the employer to make whole the locked out employees.

In its earlier decision, the Board had found that the employer's lockout did not violate the Act, but that the employer violated the Act by bargaining

individually with employees, offering them terms for returning to work that differed from those offered to the Steelworkers. The Board's order altered the administrative law judge's remedy by, among other things, omitting provisions requiring the employer to reinstate the locked out employees and make them whole.

The union and the General Counsel filed motions for reconsideration, contending that the Board erred in failing to order as a remedy for the violations found that the employer make whole the locked out employees for the loss of pay they suffered, from the time that the employer made its unlawful individual offers to the employees until the time that the lockout ended and the employees were reinstated. The union and the General Counsel contended that such a make-whole remedy was necessary to undo the effects of the violation.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

Dublin Town Ltd. (2-CA-19674; 282 NLRB No. 46) New York, N.Y. 28 November. The Board held that the employer unlawfully discharged seven employees for their protected concerted activity in engaging in a strike against the employer.

The employer is a jobber in the garment industry, cutting fabric and shipping the pieces for subcontractors to sew. It employed seven employees as cutters and packers. The employees did not have an exclusive collective-bargaining representative.

Over a period of time, the employees complained to each other about various terms and conditions of their employment. Eventually, the employees decided to take concerted action, which lead to a work stoppage designed to attract the employer's attention to their complaints.

On the next day, the employees went to the employer's office to talk and the employer distributed paychecks and told them to clean out their lockers. The employees set up a picket line after speaking with representatives of Ladies Garment Workers Local 23-25.

The Board held that the employees' discharges were motivated by their strike action protesting working conditions.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charge filed by Ladies Garment Workers Local 23-25; complaint alleged violation of Act's Section 8(a)(1). Hearing at New York on 20 December 1983. Adm. Law Judge Raymond P. Green's decision issued 30 March 1984.

* * *

Pony Express Courier Corp. (19-RC-10477; 282 NLRB No. 26) Helena, Missoula, Billings, and Great Falls, Mont. 25 November. Affirming the Regional Director's decision, Members Babson and Stephens found that threats of physical injury made

by three employees to their coworkers did not warrant setting aside the election; and therefore certified Montana Union of Guards as the representative of all full time and regular part time courier drivers of the employer. Chairman Dotson dissented.

Members Babson and Stephens noted that the three employees were not agents of the union, that the objected-to threats were not directed to soliciting or influencing employees to vote for the union, and that the threats were not made against a backdrop of an actual incident of physical injury or damage to property or followed by an act of violence. Further, the incidents in question all occurred several weeks before the election, and were not rejuvenated at the time of the election, they stated.

Thus, viewing the threats separately as well as cumulatively, Members Babson and Stephens found that they were insufficient to have created an atmosphere of fear and reprisal which rendered a free expression of choice of representative impossible.

The majority held that RJR Archer, Inc., on which Chairman Dotson relied, did not command a different result for the threats in that case were far more serious than those here.

Chairman Dotson would set aside the election and direct that a second election be conducted. He stated "the dissemination of threats of physical harm was integral to the Board's setting aside the election in RJR Archer, Inc., ... It takes on even greater significance where, as here, it occurs within a relatively small unit of approximately 20 employees and where a change in no more than 3 votes would alter the outcome of the election."

Thus, in view of the number and severity of the threats, their dissemination, and their established tendency to coerce, Chairman Dotson would find that the conduct tended to quell employees' expression of free choice and destroyed laboratory conditions necessary for the conduct of a free and fair election.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

Heck's, Inc. (10-CA-20230; 282 NLRB No. 43) Oak Ridge, Tenn. 24 November. Granting a motion for partial summary judgment, the Board found that the employer answer to the backpay specification did not conform to Board requirements about compliance matters within the employer's knowledge, and therefore it deemed as true all allegations of the backpay specification, except the issue with respect to Kathleen Jackson's interim earnings.

The proceeding was remanded to the Regional Director to arrange a hearing before an administrative law judge limited to the determination of the amounts of Jackson's interim earnings.

Summary judgment was granted based on the employer failure to deny the backpay specification as prescribed by Board rules and regulations, or to explain adequately its failure to do so. While asserting that certain allegations of the backpay specification were incorrect, the employer failed to offer any alternative formula or to furnish appropriate supporting figures for computing the amounts owed Jackson.

The Board had ordered in a decision reported at 277 NLRB No. 98 that Jackson be reimbursed for loss of earnings resulting from an unlawful discharge.

(Chairman Dotson and Members Johansen and Stephens participated.)

General Counsel's motion for summary judgment filed on 27 August 1986.

* * *

Cemcom of Missouri (14-CA-17810; 282 NLRB No. 37) St. Louis, Mo. 24 November. The Board ordered the employer as successor to Warner Amex Cable Communications of St. Louis, Missouri to bargain with the Communication Workers, representative of all field technician employees at the employer's Olivette and Fenton, Missouri facilities.

Cemcom shortly after Warner and the union executed a 1-year contract, purchased Warner and its assets. When the employer commenced operations, its work force consisted entirely of former Warner employees.

Arguing that it is not a legal successor, the employer contended that with the takeover, it implemented dramatic changes in the bargaining unit employees' terms and conditions of employment that militated against a finding of substantial continuity in the identity of the employing enterprise from Warner to the employer.

Members Babson and Stephens held that those changes in the working conditions do not basically affect the continuation of the employing enterprise. Fabsteel Co. of Louisiana and Burns Security Services.

Member Johansen found that the changes concern matters that are not relevant to the continuity-of-enterprise inquiry under Burns. Instead, he found that the employer merely exercised its right to make changes in the employees' initial terms and conditions of employment. By setting employees' initial terms and conditions of employment, however the employer did not affect the nature of the employing enterprise, he stated.

The Board agreed with the General Counsel that a unit description which reflected the new job titles assigned by the employer to the unit employees' work is appropriate. As part of an effort to streamline operations, certain job functions were consolidated and the employer reclassified the unit employees' modified functions into four categories. The Board revised the unit description accordingly.

(Members Johansen, Babson and Stephens particpated.)

Charge filed by Communications Workers; complaint alleged violation of Act's Section 8(a)(1) and (5). Hearing at St. Louis, Mo. on 22 May 1985. Adm. Law Judge Elbert D. Gadsden's decision issued 30 September 1985.

* * *

Sunrise, A Community for the Retarded, Inc. (12-RC-6633; 282 NLRB No. 35) Avon Park, Fla. 24 November. The Board set aside an election held 11 July 1986, petitioned for by Teamsters Local 444, because it was conducted in an inappropriate stipulated unit consisting of both professional employees (registered nurses) and nonprofessional employees, without affording the professionals an opportunity to vote as to whether they wished to be included in such a unit.

The Board, therefore, vacated the stipulation and remanded the proceeding to the Regional Director to resume processing of the petition by either assisting the parties to reach agreement on a new stipulation or, in the absence of a stipulation, conducting a hearing on the unit issue.

The hearing officer found that the registered nurses were professional employees; and that the stipulated unit was contrary to the Act because it included both professional employees (registered nurses) and nonprofessional employees, without affording the professionals an opportunity to vote as to whether they wished to be included in such a unit. However, the hearing officer noted that even if the ballots of the registered nurses were voided, the union still received a majority of the valid votes cast. He recommended that the union be certified as the exclusive bargaining representative of the unit as modified to exclude the registered nurses.

The employer excepted to the hearing officer's proposed modification of the bargaining unit on the ground that the Board has no authority to rewrite the job classifications included and excluded in a stipulated unit. The employer further contended that the proposed modification ignores the votes of the registered nurses, thus giving no consideration to their right to representation, and argued that the election should be set aside and the petition dismissed.

While agreeing with the hearing officer that the stipulated unit on its face was contrary to the Act, the Board disagreed that the defect could be remedied simply by modifying the unit.

(Chairman Dotson and Members Babson and Stephens participated.)

* * *

Manhattan Graphic Productions and Ace Typographers (2-CA-16952 et al.; 282 NLRB No. 51) New York, N.Y. 26 November. Affirming an administrative law judge's supplemental decision, the Board ordered the employers to pay Sherwin Winnick $14,879; Paul Cohen $7,414; Alan Wiseman $6,897; and Rueben Lawrence III $17,399. Interest shall be added to each amount.

In a 1981 unpublished order and a 1981 published decision and order, the Board ordered the employers to offer Wiseman, Winnick, Cohen and Lawrence

reinstatement, and to make them whole for any loss of earnings as a result of their unlawful discharges. Controversies arose with respect to the backpay due, and the employer contested the backpay specification.

The employer additionally argued that interest on the backpay amounts should be excluded because of the "unconscionable delay" of the NLRB's regional office in issuing the backpay specification. Without determining the reasons for the delay, (although he said the issues here are very complex), the Board always included interest irrespective of delay, the judge stated. Further, in accordance with his conclusions that valid reinstatement offers were not made to Lawrence and Winnick, he concluded that their backpay shall continue to accrue until such time as the employers make valid offers of reinstatement.

(Members Johansen, Babson and Stephens participated.)

Backpay hearing June and December 1984, and March, April and May 1985. Adm. Law Judge Raymond P. Green's supplemental decision issued 31 March 1986.

* * *

Operating Engineers Local 295-295C (Weather Wise Conditioning Corp.) (29-CB-5941; 29-RM-738, 29-RC-6359; 282 NLRB No. 44) New York, N.Y. 26 November. The Board affirmed the administrative law judge's decision that the union violated the Act by threatening employees with physical harm if they did not support the union during a strike against the employer.

The judge credited testimony that at a union meeting attended by employees during the strike, union representative Guarino said that if anyone went back to work, that employee might fall off a ladder. This is a violation of the Act, the judge held.

With respect to employer election objections, the judge found (1) no evidence that any property damage, either to the employees' or the employer's property, was caused by employees or union agents, (2) that no threats of physical harm were made to employees concerning their vote for the union, and (3) that the threat by Guarino was made before the election petition was filed, thus there is no basis for setting aside the election.

Objections to the representation election held 29 March 1985 were overruled. The Board certified the union as representative of all mechanics and helpers at employer's Brooklyn facility.

(Chairman Dotson and Members Johansen and Babson participated.)

Charge filed by employer; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Brooklyn, 30 September and 9 and 10 December 1985. Adm. Law Judge Eleanor MacDonald's decision issued 4 August 1986.

* * *

La Famosa Foods, Inc. (29-CA-11560, 11713; 282 NLRB No. 52) Staten Island, N.Y. 28 November. Affirming an administrative law judge, the Board held that the employer engaged in several unfair labor practices in connection with a 1984 organizing effort of Teamsters Local 27 at a Staten Island plant where the employer sold wholesale and distributed cheese and flour and related products.

Specifically, the employer unlawfully threatened its employees with discharge if they did not abandon their strike, and unlawfully offered and promised employees reinstatement, wage increases and other benefits if they abandoned their strike and union support. The employer illegally discharged four employees because of their union activity; unlawfully harrassed and subjected two of them, after their reinstatement, to more onerous terms and conditions of employment and, finally, discharged them again; and unlawfully refused to reinstate the four employees upon their unconditional offer to return to work.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Teamsters Local 27 and individuals; complaint alleged violation of Act's Sections 8(a)(1), (3) and (4). Hearing at Brooklyn, 10-13 and 18-20 June 1985. Adm. Law Judge Robert T. Snyder's decision issued 4 April 1986.

* * *

Professional Mechanical Insulators, Inc., (27-CA-9637; 282 NLRB No. 38) Denver, Colo. 26 November. Absent good cause being shown for the employer failure to file a timely answer to the complaint, the Board granted summary judgment and found unlawful the employer failure and refusal to recognize and bargain collectively with Heat and Frost Insulators and Asbestos Workers Local 28 by repudiating its collective-bargaining agreement with the union. The Board also found unlawful the employer failure to abide by any of the agreement's provisions, including making payments to fringe and trust funds.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Heat and Frost Insulators and Asbestos Workers; Local 28; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 30 July 1986.

* * *

Einhorn Enterprises, Inc. (29-CA-12416; 282 NLRB No. 31) Jamaica, N.Y. 24 November. Granting summary judgment, the Board found that the employer unlawfully refused to bargain with Amalgamated Lithographers Local 1, certified representative of all lithographic production employees.

All issues raised by the employer were or could have been litigated in the underlying representation proceeding, the Board found.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charge filed by Amalgamated Lithographers Local 1; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 2 September 1986.

* * *

Operating Engineers Local 825 (4-CD-691; 282 NLRB No. 39) Forked River, N.J. 25 November. Employees of Jersey Central Power and Light Company represented by Electrical Workers IBEW System Council U-3 were awarded the work of operating the mobile crane used to support maintenance and modification work being performed by Catalytic, Inc. at the Oyster Creek Nuclear Generating Station in Forked River, New Jersey.

Operating Engineers Local 825 had picketed and handbilled neutral entrances of the Oyster Creek facility with an object of forcing Jersey Central to reassign the disputed work to its members. The Board concluded that the issuance of a broad order is inappropriate and limited the determination to the controversey that gave rise to this proceeding.

The Board relied on the factors of collective-bargaining agreements; employer preference and past practice; area and industry practice; relative skills and safety; and economy and efficiency of operations.

(Chairman Dotson and Members Babson and Stephens participated.)

Charge filed by GPU Nuclear Corporation and Jersey Central; complaint alleged violation of Act's Section 8(b)(4)(D).

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

R-B Rentals, A Sole Proprietorship (Individual), Jeffersonville, Ind. 25 November. 9-CA-17694; JD--296--86, Thomas E. Bracken, Adm. Law Judge

National Bank of Greece, S.A. (Individual), Boston, Mass. 25 November. 1-CA-23,128; JD--303--86, Thomas R. Wilks, Adm. Law Judge

Culmtech, Ltd. (Individuals and Mine Workers), Wilkes-Barre, Penna. 24 November. 4--CA--15595, 4--CA--15743; JD--302--86, Frank H. Itkin, Adm. Law Judge

J.J. Cassone Bakery Inc. (Bakery Workers Local 3), Porchester, N.Y. 24 November. 2-CA-21004-1,-2; JD(NY)--104--86, Raymond P. Green, Adm. Law Judge

Medical Arts Center Hospital (S.E.I.U. Local 144), New York, N.Y. 25 November. 2-CA-21417; JD(NY)--105--86, Arthur A. Herman, Adm. Law Judge

Food and Commercial Workers Local 23 (Mt. Royal Foodland), Glenshaw, Penna. 26 November. 6--CP--441; JD--305--86, Robert M. Schwarzbart, Adm. Law Judge

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2046

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

1 - 5 DECEMBER 1986 W-2046

CASES SUMMARIZED

A/Z Electric, Inc.	Ledyard, Conn.	3
Barkus Bakery	Allison Park, Penna.	2
Fitzgerald Underwear Corp., K & E Industries, Inc.	Tifton, Ga.	1
Laborers' Local 373 (Arrow Enterprises)	Stewart, Penna.	2
The Big East Conference	Providence, R.I.	1

NEWARK PUBLIC LIBRARY
OCT 21 1986
U. S. GOVT. PUBS.
DEPOSITORY ITEM

OTHER CONTENTS

List of Decisions of Administrative Law Judges 4

List of Directions of Elections by Regional Directors 5

Request Form for Decisions

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

LR1.15/2:

The Big East Conference (4-CA-14754; 282 NLRB No. 50) Providence, R.I. 1 December. Agreeing with an administrative law judge, the Board held that the officials employed by the Big East were independent contractors, and therefore dismissed the complaint alleging that the employer illegally refused to bargain with Collegiate Basketball Officials Association, Inc. by virtue of successorship bargaining rights.

The Big East decided to establish its own officiating program in May 1984, and obtained signed individual contracts from officials to referee Big East games. A majority of those officials had been Eastern College Basketball Association officials, and were members of CBOA. Previously, the Big East had utilized the ECBA officiating service.

The judge held that the key issue here was whether the ECBA officials were independent contractors or employees. If they were independent contractors then the relationship between ECBA and CBOA was not a bargaining relationship within the meaning of the Act. Thus, if the officials were independent contractors, the Big East could not succeed to a bargaining obligation protected by the Act. If the officials were independent contractors, CBOA did not act on behalf of employees and was not a labor organization within the meaning of the Act.

Applying the factors to analyze cases of this type as set forth in ARA Leisure Services and Standard Oil Co., the judge found that the ECBA officials were independent contractors and not employees. In particular he noted their independently acquired skills and experience, and their ultimate control during games, and further found that they have considerable freedom in determining the number of games they will work. Also noted in the judge's analysis, was the explicit provision in the individual contracts that the officials were independent contractors.

Having found that ECBA officials were not employees, the judge held that their relationship, through the CBOA with ECBA was not a bargaining relationship between an employer and its employees. Thus, there was no bargaining obligation on the part of the ECBA and, in turn none, to which the Big East could have succeeded.

(Chairman Dotson and Members Babson and Stephens participated.)

Charge filed by Collegiate Basketball Officials Association, Inc.; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Philadelphia, Penna., 21, 22 and 23 October 1984. Adm. Law Judge Robert A. Giannasi's decision issued 29 May 1986.

* * *

Fitzgerald Underwear Corp., K & E Industries, Inc. (10-CA-21493; 282 NLRB No. 54) Tifton, Ga. 2 December. Granting summary judgment, the Board held unlawful the employer's refusal to bargain with Ladies' Garment Workers' Union, the certified representative of all production and maintenance employees, and its refusal to furnish information pertinent to bargaining.

Summary judgment was granted on a finding that the employer did not raise any properly litigable issue in this proceeding.

(Chairman Dotson and Members Babson and Stephens participated.)

Charge filed by ILGWU; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 4 August 1986.

* * *

Laborers' Local 373 (Arrow Enterprises) (6-CB-7014; 282 NLRB No. 53) Stewart, Penna. 2 December. Adopting an administrative law judge's decision, the Board held that the union violated the Act by causing the employer to refuse employment to Charles G. Grodes, an applicant who had filed charges against the union's officers.

Grodes was interviewed by employer co-owner Kraly for a job at a project where the employer was subcontracted to perform demolition work. The judge credited Kraly's testimony that although he considered hiring Grodes, he refused to do so twice -- initially after a conversation with union president MaManus, and two weeks later after a conversation with union steward O'Leary.

The judge found that upon inquiry by Kraly, McManus told him not to hire Grodes because "he's problems, he's got charges against the local." To the extent O'Leary later indicated that Grodes should not be hired, the judge said O'Leary led Kraly to believe that the union's position with regard to Grodes had not changed.

In sum, the judge concluded that when the opportunity arose, speaking through its president and later the job steward, the union caused the employer not to hire Grodes because he had engaged in activity protected by Section 7.

(Chairman Dotson and Members Johansen and Babson participated.)

Charge filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A) and 8(b)(2). Hearing at Pittsburgh, Penna. on 9 June 1986. Adm. Law Judge James L. Rose's decision issued 6 August 1986.

* * *

Barkus Bakery (6-CA-18814; 282 NLRB No. 55) Allison Park, Penna. 5 December. The Board affirmed an administrative law judge's decision, and held that the employer unlawfully interfered with its employees' right to organize by attempting to prevent representatives of Bakery Workers Local 12 from distributing literature to bakery employees in the parking area of the property adjacent to the employer, and by summoning the police to assist in their removal.

The employer did not have a parking area, and shared the parking lot of adjacent Highway Inn as provided in a lease negotiated by the owner of both parcels of land. The dispute arose when two union organizers started passing out union literature on the Highway Inn parking lot. The general manager of the bakery asked the agents to leave, saying they were on private property, but they refused and continued to leaflet without further interruption. However, on the fourth day of leafletting, the employer called the police. The union organizers were questioned by the police in the presence of 5-10 employees but were permitted to continue hand billing. They stayed for another half hour but then left for good.

In affirming the judge's conclusion that the employer violated the Act by attempting to eject the union's organizers from the premises of the Highway Inn and by calling the police to assist in their removal, the Board did not rely on her finding that the union agents never set foot on the employer's property. Rather, the Board relied on the fact that the employer's representatives never distinguished between the premises of the employer and those of the Highway Inn, and that they had told the organizers they had no right to be on Highway Inn property. The Board held that the employer clearly attempted to prevent the union representatives from distributing literature anywhere in the parking lot, including the portion leased by the Highway Inn's proprietor.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charge filed by Bakery Workers Local 12; complaint alleged violation of Act's 8(a)(1). Hearing at Pittsburgh, Penna. on 8 May 1986. Adm. Law Judge Arline Pacht's decision issued 16 July 1986.

* * *

A/Z Electric, Inc. (39-CA-2722; 39-RC-632; 282 NLRB No. 57) Ledyard, Conn. 5 December. Affirming an administrative law judge, the Board held that the employer illegally fired two employees who had protested working conditions in connection with a 1985 organizing effort of Electrical Workers (IBEW) Local 35. Other unfair labor practices engaged in by the employer were coercively interrogating employees about union support or union activities; granting increased wages to induce employees to reject the union; creating the impression that it had the union activities of employees under surveillance; and threatening employees with closing the business if they voted for the union.

The Board also ordered the opening and counting of three ballots which were cast in the representation election held 8 October 1985.

(Members Johansen, Babson and Stephens participated.)

Charge filed by individual; complaint alleged violation of Act's Section 8(a)(1) and (3). Hearing at Hartford, Conn., 18, 19, 20, 21 and 24 March 1986. Adm. Law Judge Harold B. Lawrence's decision issued 18 August 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Vulcan Trailer Mfg. Co., Inc. (Boilermakers Local 583), Bessemer/Montevallo, Ala. 8 December. 10-CA-21706; JD(ATL)--79--86, William N. Cates, Adm. Law Judge

Siemens Energy & Automation, Inc. (Industrial Union Department), Wilmington, N.C. 5 December. 11--CA--12003; JD--309--86, Michael O. Miller, Adm. Law Judge

Maxwell's International Inc., Debtor in Possession, d/b/a Maxwell's Plum (Hotel and Restaurant Employees Local 2), San Francisco, Calif. 24 November. 20--CA--20367; JD(SF)--143--86, Earldean V.S. Robbins, Adm. Law Judge

K.J.S. Corp. d/b/a Sax Foods (Food and Commercial Workers Local 7), Aurora, Colo. 25 November. 27--CA--9508, 27--CA--9562; JD(SF)--145--86, James S. Jenson, Adm. Law Judge

Food and Commercial Workers Local 23 (D & D Mihalic Corp., d/b/a Mt. Royal Foodland), Glenshaw, Penna. 26 November. 6--CP--441; JD--305--86, Robert M. Schwarzbart, Adm. Law Judge

Warner Lambert, Inc. (Individual), Vega Baja, P.R. 26 November. 24--CA--5256; JD--304--86, Stephen J. Gross, Adm. Law Judge

Williams Motor Transfer, Inc. and Amie Bellavance & Sons Inc. (Individual and Teamsters Local 597), Barre, VT. 28 November. 1--CA--23,199, et al.; JD--299--86, Marion C. Ladwig, Adm. Law Judge

Wagner, A Division of Cooper Industries, Inc. (Steelworkers), Tullahoma, Tenn. 2 December. 26-CA-11690; JD(ATL)--73--86, Richard J. Linton, Adm. Law Judge

Carpenters Local 89 (S.J. Groves and Sons Company) (Individual), Mobile, Ala. 2 December. 15-CB-3155; JD(ATL)--78--86, Philip P. McLeod, Adm. Law Judge

Crown Zellerbach Corp. (Individual), St. Louis, Mo. 3 December. 14-CA-18243; JD--308--86, Martin J. Linsky, Adm. Law Judge

The Presbyterian Hospital in the City of N.Y. (Service Employees Local 32B-32J), New York, N.Y. 3 December. 2--CA--21047, 2--CA--21065; JD(NY)--106--86, Julius Cohn, Adm. Law Judge

Hudson Valley Hotels, Ltd. d/b/a Quality Inn Albany (Individual), Albany, N.Y. 2 December. 3-CA-12955; JD(NY)--107--86, Eleanor MacDonald, Adm. Law Judge

Moore Business Forms, Inc. (Teamsters Local 414), Angola, Ind. 2 December. 25--CA--17427, et al.; JD--306--86, Thomas A. Ricci, Adm. Law Judge

Kinder-Care Learning Centers, Inc. (Auto Workers District 65), Pittsburgh, Calif. 19 November. 32--CA--7817; JD(SF)--142--86, George Christensen, Adm. Law Judge

* * *

DIRECTIONS OF ELECTIONS

(Regional Directors have issued decisions and directions of elections in the following representation cases. In some, requests for review may be filed with the Board.)

Bethany Methodist Terrace, A Division of Bethany Methodist Health Care Corp. (13-RC-16990), Chicago, Ill. 25 November. All service and maintenance employees, including nurse's aides, activities department employees, dietary department employees, maintenance department employees, housekeeping department employees, physical therapy assistants, technical employees, including Licensed Practical Nurses and business office clerical employees and office clerical employees shall vote for representation by Food and Commercial Workers Local 1540, or for no representation.

Araclean Services, Inc. A Division of Aratex Services, Inc. (13-RC-17012), Chicago, Ill. 1 December. All full-time and regular part-time production employees shall vote for representation by Independent Industrial Environmental Workers Union, or by Teamsters Local 142, or for no representation.

Marriott Corporation (25-RD-948), Indianapolis, Ind. 2 December. All full-time and regular part-time employees shall vote for representation by Hotel and Restaurant Employees Local 84, or for no representation.

Organon Inc. (22-RD-869), Newark, N.J. 26 November. All professional employees, including analytical chemists, chemist/biologists, microbiologists and validation specialists shall vote for representation by Radio & Machine Workers Local 332, or for no representation.

* * *

DATE _____

REQUEST FOR DECISIONS

	CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.			
2.			
3.			
4.			
5.			

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570

W-2047

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

8 - 12 DECEMBER 1986 W-2047

CASES SUMMARIZED

NEWARK PUBLIC LIBRARY
JAN 16 1987
U.S. GOVT. PUBS.
DEPOSITORY 376

Aluminum Welding & Machine Works, Inc.	Burns, Harbor, Ind.	3
Carpenters District Council of Western Pennsylvania	Greentree, Penna.	1
Chemical Workers Local 8-398	Philadelpia, Penna.	4
Every Woman's Place, Inc.	Muskegon, Mich.	5
Landhill Press, Inc. and Rotary Business Systems, Inc.	East Farmingdale, N.Y.	3
Painters and Allied Trades Local 277	Atlantic City, N.J.	4
Prince Pastries	New Kensington, Penna.	2
Syncor International Corp.	Philadelphia, Penna.	2
Wabash Alloys, Inc.	Wabash, Ind.	1

OTHER CONTENTS

List of Decisions of Administrative Law Judges 6

Request Form for Decisions

LR 1.15/2:

Correction:

Last week's summary of The Big East Conference, 282 NLRB No. 50 incorrectly stated the Board held that basketball officials employed by the Big East were independent contractors. The Board did not specifically rule on the status of Big East officials; however it did hold that Eastern Conference Basketball Association officials were not employees within the meaning of the Act.

Note: The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board.

Copies of Board decisions, if available, may be obtained from the NLRB Division of Information, Washington, D.C. 20570, using the request form at the end of this issue. Due to budgetary constraints, please limit the number of decisions requested.

The **Weekly Summary of NLRB Cases** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is $75.00 a year for domestic mailing, $93.00 for foreign address. Single issues may be obtained for $1.75 domestic, $2.19 foreign. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Carpenters District Council of Western Pennsylvania (Bridges and Co., Inc.) (6-CC-1668; 282 NLRB No. 56) Greentree, Penna. 11 December. In agreement with an administrative law judge, the Board held that the union violated the Act by picketing a designated neutral gate to a construction site between 29 April and 2 May, and 29 May and early June 1986; and by inducing and encouraging employees of neutral contractors not to perform services at the site in furtherance of the union's dispute with Bridges.

There were no posted signs or other markings when the union began picketing the site on 9 April 1986. Bridges posted signs at the site's two gates on 29 April, and sent the union a telegram advising that separate entrances had been established, and that "if you wish to picket Bridges & Company Inc. while they are working on this project do so only at gate #1. Picketing any other location at this jobsite will be considered secondary and all other appropriate legal action will be taken."

The judge concluded that the union's picketing of the designated gate after 29 April was designed to ensnare in the union's controversy with Bridges the neutral contractors who used that gate. He found that the posted signs were "unmistakably clear" as was Bridges' telegram to the union. Despite this "well-articulated dichotomy," he stated, the union continued to picket at the secondary gate. He found that the union advanced no meritorious rebuttal to this strong inference of unlawful intent.

(Members Johansen, Babson and Stephens participated.)

Charge filed by Bridges and Co., Inc.; complaint alleged violation of Act's Section 8(b)(4)(i) and (ii)(B). Hearing at Pittsburgh, on 13 August 1986. Decision of Adm. Law Judge Bernard Ries issued 2 October 1986.

* * *

Wabash Alloys, Inc. (25-CA-15331 et al.; 282 NLRB No. 59) Wabash, Ind. 9 December. Affirming an administrative law judge's decision, the Board held that the employer unlawfully threatened Donald Richmond with more arduous work and assigned him more arduous work because of his protected and concerted safety-related complaints.

Following one such complaint made after Richmond noticed chlorine gas while jackhammering inside a furnace, superintendent Blair remarked that further complaints by Richmond would result in his assignment of more jackhammering. Since jackhammering was commonly considered the roughest job assignment and Richmond was assigned to that duty in the same furnace for two consecutive days after Blair's remark, the judge concluded that Blair's statement was not an idle remark but an illegal threat based on Richmond's protected concerted activity.

Four months after that threat Richmond and another employee were discharged, but the judge concluded that even if there were support for a prima facie case of unlawful discharges motivated by Richmond's protected concerted

activities, the employer showed that the two workers would have been discharged even in the absence of Richmond's protected conduct.

(Members Johansen, Babson and Stephens participated.)

Adm. Law Judge Karl H. Buschman's supplemental decision issued 30 September 1986.

* * *

Syncor International Corp. (4-CA-15468; 282 NLRB No. 63) Philadelphia, Penna. 10 December. The Board affirmed an administrative law judge's decision that the employer unlawfully refused to bargain with Teamsters Local 107 after the union proposed in contract negotiations to eliminate part-time drivers and technicians from coverage of the contract.

The employer conceded that it refused to bargain, but raised three affirmative defenses. Two defenses, the judge held, failed on the facts of the case. Despite the employer claim that the union abandoned the part-time truckdrivers and technicians, he found that the facts show no more than proposals or assertions of a desire to remove them from the contract unit. In rejecting the employer argument, the judge further noted that the parties stipulated that the union did not insist to impasse on its proposal to change the scope of the bargaining unit, and that a party can lawfully propose such a change.

The Board held that the third defense--- that the representation proceeding generated by a petition for amendment for certification was the only appropriate forum to determine the issues of this case--- was moot. On 29 July 1986, the Board denied the employer request for review of the Regional Director's dismissal of the petition.

(Members Johansen, Babson and Stephens participated.)

Charge filed by Teamsters Local 107; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at Philadelphia, 16 April 1986. Adm. Law Judge David S. Davidson's decision issued 6 August 1986.

* * *

Prince Pastries (6-CA-19168; 282 NLRB No. 49) New Kensington, Penna. 10 December. On motion for summary judgment, the Board found unlawful the employer's refusal to bargain with Bakery Workers Local 12 certified representative of its employees.

Summary judgment was granted in the absence of good cause being shown for the employer failure to file a timely answer.

(Chairman Dotson and Members Babson and Stephens participated.)

Charge filed by Bakery Workers Local 12; complaint alleged violation of Act's Section 8(a)(1) and (5). General Counsel's motion for summary judgment filed 10 September 1986.

Landhill Press, Inc. and Rotary Business Systems, Inc., its alter ego and successor (29-CA-9392, 10490; 282 NLRB No. 58) East Farmingdale, N.Y. 9 December. Upholding an administrative law judge's decision, the Board found that Rotary Business Systems, Inc. as alter ego of Landhill Press, Inc. illegally refused to recognize Graphic Communications Local 51 as the representative of its pressroom employees, and refused to furnish the union with names and addresses of unit employees.

The judge found that the true purpose for which Rotary was formed was to evade Landhill's responsibility to honor its collective-bargaining agreement with the union.

Regardless of whether Rotary was the alter ego of, or successor to, Landhill, the judge found merit in the General Counsel's contention that the union was entitled to the information sought by it from Rotary.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Graphic Communications Local 51; complaint alleged violation of Act's Section 8(a)(5) and (1). Hearing at New York, N.Y., on 5 March, 25, 26 and 27 April, 7 and 8 May, and 12 June 1984. Adm. Law Judge Thomas T. Trunkes' decision issued 3 January 1985.

* * *

Aluminum Welding & Machine Works, Inc. (25-CA-17624; 282 NLRB No. 62) Burns Harbor, Ind. 9 December. Affirming an administrative law judge, the Board held that the employer violated the Act by refusing to reinstate former economic striker Alan James Plamowski immediately after work for which he was qualified became available.

The economic strike began during negotiations between the employer and Teamsters Local 142 for an initial collective-bargaining agreement. After an agreement was reached, the employer began reinstating striking employees upon an unconditional offer made by the union on the employees' behalf. Plamowski, a machinist, was denied reinstatement because of insufficient work for him at that time. When work did increase, the employer hired a new machinist instead because he was much faster than Plamowski.

The judge stated that an economic striker's reinstatement rights are not dependent on an employer's ability to find a faster or otherwise better worker after an unconditional offer to return to work is made. He held that when work for which Plamowski was qualified became available, his right to reinstatement matured; and that the employer did not show any legitimate and substantial business justification to defeat that right.

(Members Johansen, Babson and Stephens participated.)

Charge filed by individual; complaint alleged violation of Act's Section 8(a)(3) and (1). Hearing at Portage, 27-28 February 1986. Adm. Law Judge David L. Evans' decision issued 17 June 1986.

Chemical Workers Local 8-398 (Gilbert Spruance Co.) (4-CB-5144; 282 NLRB No. 61) Philadelphia, Penna. 8 December. The Board affirmed an administrative law judge's dismissal of a complaint alleging that the union violated the Act by processing a grievance concerning the discharge of Raymond Banas in an arbitrary and perfunctory manner.

The judge found that local union president Lorick earnestly sought to cause arbitration of the Banas grievance, but failed to accomplish that object because the employer and Lorick's advisor, an international union representative, had ultimately agreed the grievance was not timely submitted in accordance with the contract.

Local president Lorick submitted the grievance for arbitration to the American Arbitration Association 16 August 1985, but agreed to withdraw the grievance based on international union representative Burnett's recommendation. Burnett agreed with the employer that since the last step meeting was held on 23 May 1985, the two-month time frame outlined in the contract had expired on 23 July 1985.

On another allegation, the judge found no merit to the General Counsel's contention that the union violated the Act by misinforming Banas of the status of his grievance.

(Member Johansen, Babson and Stephens participated.)

Charge filed by individual; complaint alleged violation of Act's Section 8(b)(1)(A). Hearing at Philadelphia on 16 July 1986. Adm. Law Judge Donald R. Holley's decision issued 26 September 1986.

* * *

Painters and Allied Trades Local 277 (Polis Wallcovering Co. et al.) (4-CB-4170, 4941; 282 NLRB No. 60) Atlantic City, N.J. 10 December. In this supplemental proceeding, the Board ordered that the union pay Edward W. Pygatt the sum of $23,360.90 for wages lost and amounts expended by him to secure replacement medical health insurance, and pay the sum of $4900 into the I.B.P.A.T. Union and Industry National Pension Fund as contributions on his behalf.

The backpay amounts reflect the losses incurred by Pygatt as a result of union unfair labor practices as found in two decisions: the Board in a 1982 decision reported at 262 NLRB 1336 found that the union had illegally refused to refer Pygatt because of conduct which the union viewed as disloyal, and the Board in a 1986 decision reported at 278 NLRB No. 27 found that the union had illegally caused Del E. Webb New Jersey to discharge Pygatt.

The formula used to calculate backpay for Pygatt, a paperhanger, reflected the average number of hours worked by paperhangers who had at least one referral during each calendar year of the backpay period.

(Chairman Dotson and Members Johansen and Stephens participated.)

Supplemental hearing at Philadelphia, 30 April and 1 May 1986. Adm. Law Judge Claude R. Wolfe's supplemental decision issued 27 June 1986.

* * *

Every Woman's Place, Inc. (7-CA-20797; 282 NLRB No. 48) Muskegon, Mich. 11 December. Members Johansen and Stephens concluded that Cathee Doran's telephone call to the Wage and Hour Division of the U.S. Department of Labor was sufficiently linked to group activity to constitute concerted activity; and held that the employer, a nonprofit corporation which provided shelter and counseling for runaway youths, illegally laid off Doran because of her concerted activity.

Dissenting, Chairman Dotson would return to the policy of Ming Quong Children's Center and decline to assert jurisdiction over the employer as it was not demonstrated that the non-profit institution had a massive impact on interstate commerce. Secondly, he would not conclude that Doran's contacting of the Wage and Hour Division was concerted activity.

Members Johansen and Stephens stated that "contrary to our dissenting colleague, we are not repudiating the rationale of Meyers..." They noted the judge's finding that during at least several weeks before Doran made the telephone call, she and two fellow employees had brought the matter of overtime compensation for holidays to acting director Tardani on at least four or five occasions. The panel majority concluded that Doran was seeking information because she and fellow employees had received no response to their common complaint, and as a continuation of protected activity, her conduct was concerted.

"Neither, contrary to our dissenting colleague, does our decision here represent a return to Alleluia Cushion Co., 221 NLRB 999 (1975)," the panel majority stated. The employees had spoken for themselves, and Doran was advancing those expressed interests with her call, the majority said.

Chairman Dotson found that the General Counsel failed to establish that the employees' questioning of Tardani regarding compensatory time for holiday work was concerted. Further, the Chairman found no evidence that Doran was acting on the authority of any employees when she made the call. In his opinion, the majority, without regard to what the General Counsel established or failed to establish, found concertedness by applying the Alleluia presumption that individual actions regarding "group concerns" are concerted -- the "very legal fiction" that the Board intended to eliminate in its Meyers decision.

Chairman Dotson held all that the evidence in this case revealed was that Doran, of her own accord, sought information from the Labor Department and, of her own accord, reported her findings to management. He found that Doran was discharged for individually contacting the Labor Department.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charge filed by individual; complaint alleged violation of Act's Section 8(a)(1). Hearing at Muskegon on 17 March 1983. Adm. Law Judge Donald R. Holley's decision issued 19 September 1986.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

McDonnell Douglas Helicopter Co. (United Auto Workers (UAW)), Mesa, Ariz. 8 December. 28--CA--8428; JD(SF)--148--86, George Christensen, Adm. Law Judge

Elevator Industries, Inc. (Elevator Constructors Local 8), Sacramento, Calif. 8 December. 20--CA--20383; JD(SF)--150--86, David G. Heilbrun, Adm. Law Judge

Young Men's Christian Assoc. of San Francisco-Embarcadero Branch (Service Employees Local 87), San Francisco, Calif. 8 December. 20--CA--20189(E); JD(SF)--149--86, Clifford H. Anderson, Adm. Law Judge

The Red Food Stores, Inc., Premier Investment Properties, Inc., and Corker Development Corp. (Food and Commercial Workers), Knoxville, Maryville, Alcoa, Tenn. 15 December. 10-CA-21677; JD(ATL)--77--86, Lawrence W. Cullen, Adm. Law Judge

Bickerstaff Clay Products, Co., Inc. (Laborers' Local 246), Phenix City, Ala. 15 December. 10-CA-21681; JD(ATL)--81--86, J. Pargen Robertson, Adm. Law Judge

MCI Mining Corp. (Individuals), Bulan, Ky. 15 December. 9-CA-23052--1; JD--312--86, Richard H. Beddow, Jr., Adm. Law Judge

Centel Business Systems, A Division of Centel Communications Co. and Electrical Workers (IBEW) Local 396 (Individuals), Las Vegas, Nevada. 5 December. 31--CA--15615, 31--CB--6498; JD(SF)--147--86, David G. Heilburn, Adm. Law Judge

Scott's Jack London Seafood, Inc., d/b/a Scott's Seafood Grill & Bar (Hotel and Restaurant Employees Local 28), Oakland, Calif. 5 December. 32--CA--7937; JD(SF)--146--86, Jerrold H. Shapiro, Adm. Law Judge

299 Lincoln Street, Inc. a wholly-owned subsidiary of Broad Reach Health Services, Inc. (Lincoln Employees Union), Worcester, Mass. 11 December. 1-CA-23,214, et al.; JD--314--86, Claude R. Wolfe, Adm. Law Judge

The Setterlin Co. (Bricklayers Local 55, Carpenters Capital District Council, Cement Masons Local 536 and Laborers Local 423), Columbus, O. 10 December. 9--CA--20915(E), et al.; JD--311--86, William F. Jacobs, Adm. Law Judge

Migali Industries, Inc. (United Auto Workers District 65), Camden, N.J. 10 December. 4--CA--15141, et al.; JD--315--86, Karl H. Buschmann, Adm. Law Judge

Plumbers and Pipefitting Industry Local 162, (Tibbetts Mechanical Contractors, a Division of Natkin & Co.) (Individual), Dayton, O. 9 December. 9--CB--6470--A; JD--310--86, Marion C. Ladwig, Adm. Law Judge

Thrifty Corporation (Individual), San Diego, Calif. 26 November. 21-CA-24725; JD(SF)-144-86, William J. Pannier III, Adm. Law Judge

* * *

DATE _____

REQUEST FOR DECISIONS

CASE NAME	NLRB VOLUME CITATION (if JD, JD number)	ISSUANCE DATE
1.		
2.		
3.		
4.		
5.		

Name and Address _____

_____

_____

Please address request to:

National Labor Relations Board

Division of Information

Weekly Summary Unit

Washington, D.C. 20570